1260

SUPREME COURT OF THE UNITED STATES.

No. 106.

SAMUEL RICHARDSON AND AL., CLAIM'TS OF THE BARK "TANGIER," APP'TS,

vs.

DAVID GODDARD AND AL., LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original.	Print
Libel	2	1
Six bills of lading referred to	4	3
Warrant and monition	8	5
Stipulation for costs by claimant of vessel	9	6
Claim	9	7
Answer	10	7
Amendment of libel	12	8
Additional answer and amendment to same	15	11
Amendment to answer	16	11
Additional amendment to libel	17	12
Proclamation for day of fasting, &c	18	12
Deposition of E. H. Thompson (for respondents.)	20	14
Decree	26	18
Appeal claimed and allowed	26	18
Stipulation for costs by libellants	26	18
Certificate of clerk of U. S. district court	26	18
TESTIMONY FOR LIBELLANTS.		
Andrew Solis	27	19
Nath'l Brewer	32	23
Michael McDonald	33	24
Daniel Mahoney	34	25
Michael Driscoll	35	25
Cornelius Donovan	36	27
Thomas Manning	37	27
Geo. Phippen	39	29

	Original.	Print
TESTIMONY FOR CLAIMANTS.		
Daniel Pitman	40	29
Geo. Hardy	41	30
Lot Day	42	30
Nathan W. Bridge	42	31
Joseph Silloway	44	32
Sam'l Blanchard	45	33
Joseph Kinsman	46	33
Alex'r Isburg	46	34
Spencer R. Brown	47	34
Charles Sutton	47	35
Edward R. Washburn	47	35
Sam'l H. Sweetser	48	36
Benjamin P. Cheeney	54	40
John Grier	55	41
Daniel E. Pratt	56	42
Lewis Jones	56	42
Benjamin Brown	56	42
Joshua Mahoney	58	44
Ira Ely	58	44
EVIDENCE OF LIBELLANTS IN REPLY.		
Daniel Mahoney	60	45
J. D. Burtwell	60	45
Nath'l Brewer	61	45
Ammi C. Lombard	61	46
Edwin C. Bailey	62	46
Charles H. Parker	63	46
Nath'l Brewer	63	47
Francis Fisher	64	47
Joel Richards	64	47
Adams Bailey	64	47
Benj. Howard	65	48
Wm. J. Merriam	65	48
G. S. Fogg	65	48
Edmund F. Cutter	65	48
H. G. R. Calef	66	49
Peter Dunbar	66	49
Wm. Ropes	67	49
Henry Hall	67	49
Jas. M. Beebe	68	50
J. B. Turner	68	50
Jas. Reed	68	50
Wm. H. Boynton	69	51
Thomas Bancroft	69	51
Decree in U. S. circuit court	70	51
Report of asessor	71	51
Final decree	72	51
Claim of appeal and allowance thereof	73	52
Clerk's certificate	74	52

UNITED STATES OF AMERICA,
Massachusetts District, May term, 1857.

At a circuit court of the United States for the first circuit and district of Massachusetts, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before the honorable Benjamin R. Curtis, associate justice—

DAVID GODDARD ET AL., libellants and appellants,
versus
THE BARQUE "TANGIER:" SAM'L RICHARDSON & ALS., claimants. } In admiralty.

The transcript of the record of the district court in this cause was filed and entered at the present term of this court, and is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Massachusetts district, ss:

Special, September, 1857.

At a special district court of the United States, holden at Boston, within and for the district of Massachusetts, on Tuesday, the twenty-first day of October, A. D. 1856, before the honorable Ashur Ware, judge—

DAVID GODDARD ET AL., libellants,
versus
THE BARK "TANGIER."

This libel was filed in court on the eleventh day of April, A. D. 1856, and is as follows, viz:

To the honorable Peleg Sprague, judge of the district court of the United States for the district of Massachusetts:

The libel of David Goddard, of Roxbury, and Jeremiah Prichard, of West Roxbury, county of Norfolk, within the district of Massachusetts, merchants and partners under the firm of "Goddard & Pritchard," against the bark "Tangier," a foreign vessel, now lying in the port of Boston and Charlestown, and within said district, whereof Samuel H. Sweetser was and is master, her tackle, apparel, and furniture, and all persons intervening for their interest therein, in a cause of contract civil and maritime, alleges as follows:

First. That sometime in the month March, one thousand eight

hundred and fifty-six, R. B. Watson shipped on board said bark, then lying in the port of Apalachicola, in good order and condition, to be carried and transported in said bark to the port of Boston, and delivered to the libellants in like good order, twelve bales cotton, for the freight of five-eighths of one cent per pound, with primage and average accustomed, to be paid by the said libellants, the said Watson receiving therefor from the said master a bill of lading, a receipt and contract, whereby and wherein the said master charged his body and goods, and also the said vessel, her tackle, apparel, and furniture, for the performance of said contract, a copy of which is hereto annexed.

That during the same month of March, Sims & Cheever shipped on board said bark twenty-five square bales of cotton, as per bill of lading, a copy of which is hereto annexed and made a part of this libel, to be carried, transported, and delivered to these libellants, as per bill of lading is set forth, upon payment of the freight therein mentioned.

That during the same month of March, the said Sims and Cheever shipped on board said bark two hundred square bales of cotton, as as per bill of lading, a copy of which is hereto annexed and made part of this libel, to be carried, transported, and delivered to these libellants, as per said bill of lading is set forth, upon payment of the freight therein mentioned.

That during the same month of March, R. B. Watson shipped on board said bark sixty-three bales cotton, as per bill of lading, a copy of which is hereto annexed and made a part of this libel, to be carried, transported, and delivered to these libellants, as per bill of lading is set forth, upon payment of the freight therein mentioned.

That during the same month of March, R. B. Watson shipped on board said bark two hundred and thirty-eight bales of cotton, as per bill of lading, a copy of which is hereto annexed and made a part of this libel, to be carried, transported, and delivered to these libellants, as per said bill of lading is set forth, upon payment of the freight therein mentioned.

That during the same month of March, Wood & Ballou shipped on board said bark fifty bales cotton under deck, as per bill of lading, a copy of which is hereto annexed and made a part of this libel, to be carried, transported, and delivered to these libellants, as per said bill of lading is set forth, upon payment of the freight therein mentioned.

Second. That said bark sailed from the said port of Apalachicola for the port of Boston, with all and singular the said merchandise on board, where she arrived on or about the seventh day of April, eighteen hundred and fifty-six, and now is, but, notwithstanding the libellants have at all time been ready and willing, and are still ready and willing, to receive the said merchandise in good order, and on so receiving the same to pay the freight, yet the said master has not delivered the said merchandise in good order and condition to these

libellants, but neglects and refuses to deliver all and singular the same, except some one hundred and fifty ——— bales, part and parcel of the aforesaid five hundred and eighty-eight bales, whereby the libellants have sustained damage to the amount of some fifteen thousand dollars.

Third. That the bark is about to leave this port, and the master has refused and refuses to pay said damage, and to deliver said merchandise in good order, so that the libellants will be without remedy unless by proceeding against said vessel.

Fourth. That all and singular the premises are true, and within the admiralty and maratime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray process against said bark, her apparel, tackle, and furniture, and against the said master, and that all persons claiming any interest may be cited to answer, and that this court would decree payment of the damages, and that the vessel may be condemned.

DAVID GODDARD,
JEREMIAH PRICHARD,
By D. GODDARD.

C. B. GOODRICH, *Proctor.*

MASSACHUSETTS DISTRICT, *April 11th*, 1856.
Sworn to by said David Goddard before me.
S. E. SPRAGUE, *Clerk.*

Shipped, in good order and condition, by R. B. Watson, on board the bark called the "Tangier," whereof ——— Sweetser is master, for this voyage, now lying at the port of Apalachicola, and bound for Boston—to say: sixty-three bales cotton, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Boston, (the danger of the seas only excepted,) unto Messrs. Goddard & Prichard, or to their assigns, he or they paying freight for the said cotton three-fourths of one cent per pound, with five per cent. primage and average accustomed.

C. W. 13 c 30—18
B. C. 1 c 45—45
—
63 bales.
w. g. 31706 lbs.

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

SAMUEL H SWEETSER.

Dated in Apalachicola, the 12th day of March, 1856.
Weight unknown.

Shipped, in good order and condition, by Sims and Cheever, on

board the bark called the "Tangier," whereof ——— Sweester is master, now lying at the port of Apalachicola, and bound for Boston—to say: two hundred square bales cotton, being marked and numbered as in the margin, and are to be delivered in the like order and conditiou at the port of Boston, (the danger of the seas only excepted,) unto Messrs. Goddard and Prichard, or to their assigns, he or they paying freight for the said cotton five-eighths cent per lb., with five per cent. primage and average accustomed.

COMO	100 bales,	50764 lbs.
RLP.	100 "	53190 "
	200	103,954

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

SAMUEL H. SWEETSER.

Dated in Appalachicola, the 1st day of March, 1856.
Weight unknown.

Shipped, in good order and condition, by Sims & Cheever, on board the bark called the "Tangier," whereof ——— Sweetser is master, now lying at the port of Apalachicola, and bound for Boston—to say: twenty-five square bales cotton, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Boston, (the danger of the seas only excepted,) unto Goddard & Prichard, or to their assigns, he or they paying freight for the said cotton three-fourths of one cent per lb., with five per cent. primage and average accustomed.

AYH	11 bales	6310 lbs.
R	14 "	8384 "
	25	14694

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

SAMUEL H. SWEETSER.

Dated in Apalachicola, the 10th day of March, 1856.
Weight unknown.

Shipped, in good order and condition, by R. B. Watson, on board the bark called the "Tangier," whereof ——— Sweetser is master for this voyage, now lying at the port of Apalachicola, and bound for Boston—to say: Twelve bales cotton, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Boston, (the danger of the seas only excepted,) unto Messrs. Goddard & Prichard, or to their assigns, he or they paying freight for the said cotton five-eighths of one cent per pound, with five per cent. primage and average accustomed.

CW No. 1 c. 12—12 bales.
wg. 7, 182 lbs.

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

SAMUEL H. SWEETSER.

Dated in Apalachicola, the twelfth day of March, 1856.
Weight unknown.

Shipped, in good order and condition, by R. B. Watson, on board the bark called the "Tangier," whereof ——— Sweetser" is master for this voyage, now lying at the port of Apalachicola, and bound for Boston—to say: two hundred and thirty-eight bales cotton, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Boston, (the danger of the seas only excepted,) unto Messrs. Goddard & Prichard, or to their assigns, he or they paying freight for the said cotton five-eighths of one cent per pound, with five per cent. primage and average accustomed.

McD No. 1 c 166—166
LTR " 1 c 41— 41
TBR " 1 c 31— 31
238 ble
Wg: 121,870 lbs.

In witness whereof the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Apalachicola, the 5th day of March, 1856.

Shipped, in good order, by Wood & Ballou, on board the bark called "Tangier," whereof ——— Sweetser is master for the present voyage, now in the harbor of Apalachicola, and bound for Boston: fifty bales cotton under deck, marked and numbered as in the margin, which are to be delivered in like good order at the port of Boston, (the danger of the seas only excepted,) unto Messrs. Goddard & Prichard, or to their assigns, he or they paying freight for said cotton five-eighths of one cent per pound, with five per cent. primage and average accustomed.

Alice 1 to 18
Ocala 1 " 32
50
Weighing 36946
Freight 165.91
Prime 8.29
$174.20

In witness whereof the master of said vessel hath affirmed to four bills of lading, of this tenor and date, one of which being accomplished, the others to stand void.

SAMUEL H. SWEETSER.

Apalachicola, March 8th, 1856.
Weight and contents unknown.

Thereupon, by order of the judge, a warrant and monition issued, commanding the marshal to give notice to all persons concerned, that said libel had been filed, and that trial would be had thereon at a special district court, to be holden at the United States court-house,

in Boston, in said district of Massachusetts, on Friday, the 25th day of April, A. D. 1856, at ten o'clock a. m.; and to give said notice, by advertising the same in one of the public newspapers printed at Boston, and by posting a copy of the same notice at the said court-house in Boston, twelve days at least before said trial; and directing him to take the said bark, and her tackle, apparel, and furniture into his custody, and to make due return of his doings.

Whereon the marshal made return, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss:

BOSTON, *April* 25, 1856.

Pursuant hereunto, I have given notice to all persons concerned that the libel herein mentioned has been filed, and that trial would be had thereon, by publishing the substance of the within monition in the Boston Post, a newspaper printed in Boston, in said district, and by posting up a copy of said notice at the United States court-house, in said Boston, twelve days at least before the day within mentioned for trial; and on the eleventh day of said April, I went on board the bark "Tangier," named in said libel, with intent to take the same into my custody, and there found on board Joseph D. Coburn, one of the deputies of the sheriff of the county of Suffolk, commonwealth of Massachusetts, who was so on board and in possession thereof, by virtue of a State process of the said commonwealth, to whom I stated the substance and purport of my warrant, and he declined to deliver possession to me. Thereafter, to wit, on the nineteenth day of said April, with a warrant and monition in favor of John H. Pearson et al. against said bark, I went on board of said bark, aud the said Coburn released and withdrew from the said bark, and I thereupon took the custody thereof by virtue of the said last-named warrant and monition, and now hold the said bark and appurtenances subject thereto and to this warrant.

WATSON FREEMAN,
U. S. Marshal.

Stipulation for costs and expenses by claimant of vessel.

On the 29th day of April, A. D. 1856, personally appeared Henry Lincoln, of Boston, in the district of Massachusetts, and produced for sureties Samuel H. Sweetser and William Lincoln, said Samuel H. being of North Yarmouth, Me., and said William being of Boston.

And the said Henry, and Samuel H. and William, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors and administrators, jointly and severally, in the sum of two hundred dollars, unto the said libellants, that the said Henry should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof or by auy interlocutory order.

Claim.—April 29, 1856—Filed in the clerk's office.

GODDARD ET AL.
v.
BARQUE "TANGIER."

And now Henry Lincoln, of Boston, in said district, in behalf of Charles Richardson and Samuel Sweetser, of Portland, in the State of Maine, and William Sweetser, U. C. A. Jenks, and Hezekiah B. Means, of Yarmouth, of Maine, owners of said "Tangier," intervenes and claims on their behalf said vessel, and on oath says that they are the true and bona fide owners of said vessel, and no other person or persons are owners thereof, and on oath says that he is authorized by said owners to make such claim.

HENRY LINCOLN.

April 29.—Sworn to before me.

S. E. SPRAGUE, *Clerk.*

Answer.—May 3d, 1856.—Filed in clerk's office.

The answer of Henry Lincoln, agent of Charles Richardson and Samuel Sweetser, of Portland, Me., in the State of Maine, and William Sweetser, U. C. A. Jenks, and Hezekiah B. Means, of Yarmouth, in said State, owners and claimants of the bark "Tangier," to the libel of Daniel Goddard and Jeremiah Prichard against said bark.

And now comes Henry Lincoln, of Boston, agent of the owners of said bark "Tangier," and for answer to the libel of said Goddard & Prichard, doth allege and propound as follows, to wit.

1st. That the matters alleged in the first article of said libel are true.

2d. That the matters contained in the second article of said libel are not true as therein set out, and that the truth is as hereinafter particularly propounded.

3d. That the said bark, with all and singular the said merchandise on board, arrived at Boston on the sixth day of April, A. D. 1856, and the master intended to land and discharge said cargo at Battery wharf, in said Boston, but was requested by said libellants to discharge the same at Lewis wharf, in said Boston; and in pursuance of said request, he hauled up to said last-named wharf, where he arrived at about three o'clock in the afternoon of Monday, the seventh day of said April, and that they, the said master and crew, immediately commenced discharging said cargo, and continued to discharge the same until about one o'clock of Thursday, the tenth day of said April, when the entire cargo of said bark was discharged, and landed upon said Lewis wharf, in good order. That upon the seventh day of April, notice was duly given to said libellants that their goods were ready for them; and that between that time and the said tenth of April the said libellants received and carried away a considerable

portion of the goods so consigned to them and embraced in the bills of lading to said libel attached, to wit, about one hundred and fifty bales of cotton. And the respondent alleges that they have made a full, true, and complete delivery of all the merchandise in said bills of lading contained, in good order, and according to the terms of said bills of lading to said libellants; and the respondent says he has been informed that after the said cargo had been so as above delivered to said libellants, and after three o'clock of said tenth day of April, a portion of said cargo, but how much he is unable to state, was consumed by fire on said wharf while in the custody of said libellants; and he further alleges that said libellants have refused and still refuse to pay the freight upon said merchandise according to said bills of lading, although they have received said merchandise in good order and condition.

And he denies that said libellants have sustained damage through any neglect or refusal of said respondents or their agents, and avers that each and every obligation incumbent on the respondents to perform in the premises has been fully and truly performed.

4th. And further answering, he denies that the said master of said bark has refused to deliver said merchandise, but alleges that he made full, true, and complete delivery of the same to the libellants, according to the terms of the bills of lading, and admits that the master does refuse to pay any damage which may have been claimed of him by said libellants.

5th. That all and singular the premises are true, for verification whereof, if denied, this respondent craves leave to refer to the depositions and other proofs to be by him exhibited in said cause.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

HENRY SWEETSER.

R. CHOATE & BELL,
Proctors for libellants.

Boston, May 3d, 1856.—Sworn to before me.
S. E. SPRAGUE, *Clerk.*

Amendment of the libel.—May 12th, 1856—Filed by leave of court.

DAVID GODDARD ET AL.
versus
"THE BARK TANGIER."

And now the libellants come and pray leave to amend the second article of their libel, as follows:

"And the libellants allege that the claimants of the said bark pretend and set up that they, on the seventh day of April, eighteen hundred and fifty-six, notified the libellants that the goods consigned

to them were ready for delivery; that the master and crew, at three o'clock, afternoon, on the seventh day of April, at Lewis wharf, in Boston, commenced discharging the cargo of said bark, and continued to discharge the same upon the said wharf until one o'clock, afternoon, of the 10th of April. That the libellants carried away during said period some one hundred and fifty bales of their cotton; and that the master of said bark made full and true delivery of all the cotton consigned to the libellants.

But the libellants allege and propound, upon information and belief, that the said several pretences so set up by the claimants are not true; and the libellants aver that no notice was given to them that the goods consigned to the libellants were ready for delivery; that these libellants had no notice or knowledge that the said master would commence unloading the said bark at three o'clock, afternoon, of the seventh day of April aforesaid; that they had no notice or knowledge of any other certain time at which the said master would commence to unlade, or that the said master would unlade the cargo of said bark, or any part thereof, on the 10th day of the aforesaid April.

And the libellants allege and propound that the master and crew of said bark did not make full and true delivery of the said cotton at any time, except as to one hundred and sixty-three bales, as hereinafter set forth.

These libellants further aver that the master of said bark, without notice to or without the knowledge of these libellants, between three and four o'clock, afternoon, on the seventh day of April, eighteen hundred and fifty-six, commenced to unlade the said bark, as these libellants have been informed and believe, by putting cotton upon the wharf aforesaid: that he continued so unlading until about one o'clock, afternoon, on Tuesday, the eighth day of April, at which he desisted and discontinued the unlading of said bark.

The libellants further allege that the cotton so unladen on the seventh and eighth days of April belonged to different persons, and was capable of designation and of being set apart by its marks and numbers. The libellants further say, upon information and belief, that the cotton so unladen on said last-named days was not set apart by its marks and numbers, so as to be accessible to and examinable by the said libellants so far as the same was consigned to them, but was to a great extent indiscriminately piled upon the said wharf, and mixed with other cotton.

These libellants further allege that they, on Monday evening, caused notice to be given to the mate of said bark, that these libellants would require, when the bark should be ready to make delivery, a setting apart of the cotton consigned to them. These libellants further allege that they, on Tuesday and on Wednesday, the eighth and ninth days of April, eighteen hundred and fifty-six, learning that the master was putting the cotton which had arrived in said bark upon the wharf aforesaid, sent their servants and agents to receive such as was ready for delivery; that the said agents received

and carried away one hundred and sixty-three bales; that the remaining four hundred and twenty-five bales were not delivered to or set apart for or shown to these libellants.

The libellants further allege that at the close of the ninth day of April aforesaid, the agents of the libellants, as they have been informed and believe, made diligent efforts to find the residue of the cotton consigned to these libellants, but could not and did not find the same, and did not take delivery thereof.

The libellants further allege that on the morning of the tenth day of April aforesaid, the master, crew, and agents of said bark, as these libellants have been informed and believe, proceeded to unlade the residue of the cargo of said bark, being nearly one-half of its original cargo, which residue consisted, in part, of cotton consigned to these libellants. The libellants further allege that the cotton so unladen on the 10th day of April was without notice to and without the knowledge or consent of these libellants; that the same was not shown to or set apart for or delivered to the libellants; that the said cotton, shortly after it had been landed upon the wharf as aforesaid, and before any delivery thereof to the libellants, or any notice to them, or opportunity on their part to examine and receive the same, was, on said tenth day of April, to a large amount, destroyed by fire, and as to the residue thereof greatly injured and damaged by fire and water.

These libellants further allege that the said tenth day of April was kept and regarded by the citizens of the commonwealth of Massachusetts, by and in pursuance of appointment by the Governor thereof, with the advice and consent of the Council of said commonwealth, as a day of "fasting, humiliation, and prayer; that from time immemorial it has been the general usage and custom of the citizens aforesaid, and of all people sojourning within the said commonwealth on fast day, to abstain from all secular work and employment; that the said usage and custom was well known to said master; that the libellants did not consent to any unlading or delivery of the cotton consigned to them on that day; that the libellants had no knowledge that the master of said bark made or intended to make any delivery to these libellants of their said cotton, or that the same was set apart for them on said tenth day of April.

And these libellants aver that any unlading or pretended delivery of their said cotton on said tenth of April, without their consent and agreement, which was not given, is not a compliance with the said bills of lading, is not a delivery, or offer to deliver, in conformity with the terms thereof.

And the libellants aver that by reason of the matters herein propounded, the said master, the said bark and its owners, have failed and neglected to make such full and true delivery of the cotton in the said several bills of lading mentioned, as by their contract they were bound to make.

And these libellants further amend, by striking out the words

"one hundred and fifty," contained in the second article of their libel, and insert in lieu thereof the words "one hundred and sixty-three."

GODDARD & PRICHARD,
By C. B. GOODRICH,
Their attorney.

C. B. GOODRICH, *Proctor.*

Amended Answer.—Filed 20th May, 1856.

DAVID GODDARD ET AL.
vs.
BARK "TANGIER."

For answer to the amended libel of the libellants here in court filed, the claimants say that the facts charged in their answer to the original libel are true, and that a full, true, and perfect delivery of the goods mentioned in the bill of lading was made to the libellants, and that said libellants had full notice of the unlading of said vessel, and they allege that the want of notice, as set forth in said amended libel did not exist. They admit that said 10th of April was a day of public fast, but deny that the master had not a legal right to unload on that day, and aver that he had, and that the libellants were bound to receive their goods upon that day as much as upon any other day of the week. And they aver that the delivery of the goods and the unlading of said vessel, and the notice to libellants is truly set forth in the answer to the original libel, and are truly set forth in the amended libel.

By R. CHOATE & BELL.

And the libellees further allege that the libellants had notice that said cargo was to be discharged on said fast day, and assented thereto, and did actually on that day receive and take away a portion of the goods so consigned to them.

By R. CHOATE & BELL.

Amendment to Answer—Eighth of July, 1856.—Filed in court and allowed.

And said libellees, for further answer to said libel and amendments, articulately propound that they are informed and believe that if the facts set out in their answer do not amount to prove and show or if the evidence does not establish a full, true, and perfect delivery of the cotton in said bill of lading set forth to the libellants, and a determination of all liability as common carriers by reason thereof, that in such case the cotton aforesaid was in the possession of the libellees as common carriers, and was in contemplation of law on board of said vessel at the time of the fire; and that the damage, if any, to said cotton was caused by fire happening on board said vessel, without design or neglect on the part of

the owners of said vessel, and that said libellees are not liable therefor, under chapter forty-three of the laws of the United States, passed in the year 1851.

By their proctors, R. CHOATE & BELL.

Additional amendment of Libel.—July 10th, 1856.—Filed by leave of court.

And now the libellants say, in pursuance of leave to amend their said libel, that the matters set forth and propounded in the several amended and additional answers, are not true as therein exhibited.

They further allege that the said supposed fire upon Lewis wharf was not by reason of any fire which happened to or on board of said bark, or to the said cotton during the time the same was on board thereof; that the said fire was not without neglect of the owners and master of said bark, but from the neglect and want of care of the owners and master of the said bark.

The said libellants further aver that the master of the said bark, at the time he agreed to receive and at the time he did receive the several shipments of cotton, as in the libel is set forth in behalf of the said bark and its owners, entered into express and written contracts, as set forth in the said several bills of lading in the said libel set forth, wherein he contracted to transport and deliver them as in the said bills of lading are severally set forth, and without any reservation or limitation of liability, except as in said bills of lading is severally contained and set forth.

GODDARD & PRICHARD,
By C. B. GOODRICH,
Their Proctor.

Proclamation for Day of Fasting, &c.—August 29th, 1856.—Filed.

COMMONWEALTH OF MASSACHUSETTS:

By his excellency, Henry J. Gardner, Governor of the Commonwealth of Massachusetts: A proclamation for a day of public fasting, humiliation, and prayer.

Dependent upon a gracious Providence for every blessing that elevates humanity, for every pleasure that gives charm to life, and for every capability of contemplating the interests of immortality, both the hallowed practice of our forefathers, and the approach of that season when the silent forces of the universe awaken to renewed life the productive elements of the earth, call upon us to set aside a day on which, as individuals and as a nation, we may recount the blessings and lament the transgressions of the past, and invoke renewed protection and continued guidance for the future. I do, therefore, with the advice and consent of the Council, appoint Thursday, the tenth day of April next, to be observed as a day of fasting, humiliation, and prayer.

May the citizens of our Commonwealth on that day, assembled in their various places of public worship, unite as one people in the confession of national transgressions, the lust of power, the bitterness of party rancor, sectional strife, the subordination of right to expediency, the bondage of prejudice, of passion, of intemperance, man's thraldom unto man, and, above all, our continual forgetfulness of human frailty, and God's overruling omnipotence; may they confess and deplore man's personal delinquencies, remembering that the reformation of the individual lies at the foundation of national improvement; may they, while confessing the sins of the past, pray that the future, in God's providence, may shadow forth His glory for the welfare of the nations; that humanity may be elevated, the ignorant guided aright, the feeble guarded, the wicked restrained, and the oppressed vindicated; that all the pleasures and affections of the household and hearthstone may be deepened and widened, so that the holiest influences and happiest enjoyments may crown the homes of our people; that our material interests may be cherished and protected, so that the hand that labors may meet a sure recompence, and well-rewarded industry continue the glory of our land; that our educational system may be fostered, and intellectual progress keep pace with the discoveries of science and the advancement of the arts; that our charitable institutions may be blessed by the Father of Mercies, and that human sympathy may extend as wide as the sphere of human suffering; that vital and personal religion may make its sanctuary in the hearts of our people, and that our conntry may ever be a christian land, abounding in the blessings, governed by the spirit, and rich with the promises of the Gospel.

Given at the Council Chamber, in Boston, this 12th day of March, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

HENRY J. GARDNER.

By his excellency the Governor, with the advice and consent of the Council.

FRANCIS DE WITT, *Secretary.*

God save the Commonwealth of Massachusetts!

William White, printer to the State, No. 4 Spring Lane, Boston.

SECRETARY'S OFFICE,
Boston, May 12th, 1856.

I certify the foregoing to be a true copy of the proclamation for a day of "fasting, humiliation, and prayer." Dated March 12th, 1856, and issued from this department.

Witness the seal of the Commonwealth, this 12th May, 1856.

FRANCIS DE WITT.
Sec'y of the Commonwealth.

[Seal of the Commonwealth of Massachusetts.]

the owners of said vessel, and that said libellees are not liable therefor, under chapter forty-three of the laws of the United States, passed in the year 1851.

By their proctors, R. CHOATE & BELL.

Additional amendment of Libel.—July 10th, 1856.—Filed by leave of court.

And now the libellants say, in pursuance of leave to amend their said libel, that the matters set forth and propounded in the several amended and additional answers, are not true as therein exhibited.

They further allege that the said supposed fire upon Lewis wharf was not by reason of any fire which happened to or on board of said bark, or to the said cotton during the time the same was on board thereof; that the said fire was not without neglect of the owners and master of said bark, but from the neglect and want of care of the owners and master of the said bark.

The said libellants further aver that the master of the said bark, at the time he agreed to receive and at the time he did receive the several shipments of cotton, as in the libel is set forth in behalf of the said bark and its owners, entered into express and written contracts, as set forth in the said several bills of lading in the said libel set forth, wherein he contracted to transport and deliver them as in the said bills of lading are severally set forth, and without any reservation or limitation of liability, except as in said bills of lading is severally contained and set forth.

GODDARD & PRICHARD,
By C. B. GOODRICH,
Their Proctor.

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[Seal of the Commonwealth of Massachusetts.]

Deposition for Respondent.

Deposition of Edward H. Thompson, taken before Caleb William Loring, esq., (a commissioner duly appointed by the circuit court of the United States for the Massachusetts district,) on the 14th day of June, A. D. 1856.

1st interrogatory. What is your name, age, residence, and occupation, and how long have you followed the same?

Ans. My name is Edward Thompson; I am twenty-four years old; I reside at North Yarmouth, in Maine; I follow the seas; I have followed the same between seven and eight years.

2d int. Were you connected with the bark "Tangier," in April, A. D. 1856; if so, in what capacity?

Ans. I was, as second mate.

3d int. Where was said bark on the sixth day of said April?

Ans. She came into the port of Boston, and anchored off Battery wharf, and hauled in about noon or a little after.

4th int. If you say she was in Boston harbor on that day, state when she arrived there, from whence, with what cargo, if any; and where she lay in said harbor on that day?

Ans. She came from Apalachicola, with cotton. She laid at Battery wharf that day, and until Monday noon, or near noon.

5th int. State fully, if you know, where said vessel was from said 6th day of April to the 11th day of said April, and if you were with her during that time. State fully all that was done during all that time, and if anything was done with her cargo, state what in detail.

Ans. On the sixth day of April we hauled into Battery wharf about noon or a little after; the next morning, the seventh, the stevedore set some of his men aboard and got up a spar and purchase for discharging. They were expecting to haul the bark into a berth at Battery wharf different from where she lay. Messrs. Goddard & Pritchard's clerk came on board with a request to haul her to Lewis wharf. At near noon took a steamboat and commenced towing her down. At one, or a little past, we made fast at Lewis wharf. In the middle or latter part of the afternoon, they commenced discharging; they discharged until knocking-off time—the usual time, as far as I know. They went to work the next morning and worked until their dinner hour; they knocked off for dinner hour at one o'clock. The wharf was so much encumbered with cotton that they did not do anything more towards discharging until Thursday. Thursday they commenced working in the morning until they got the cotton all out of the vessel, which was at about one o'clock; it might have been a very little past. Then I went to dinner and returned very soon. I suppose it was not quite two when I came back from dinner; I don't know, as I didn't see any time. When I came aboard, or soon after I came aboard, there was a man, a junk dealer, came aboard. I was talk-

ing with him and the mate on deck, a little abaft the main-hatch on the larboard side. This man bid me good day and the mate, and went over the side and sung out "fire." He said the cotton was on fire. The mate took a draw-bucket, jumped out on the wharf, and commenced throwing water. I hove some deck buckets and also some earings on to the wharf, for the same purpose, for drawing water. The captain was in the cabin at the time this fire commenced; he hearing the noise, went right out on the wharf. I am pretty sure I did'nt go on to the wharf at all. Find-it no use to try to extinguish the fire with buckets, we commenced hauling the ship down to the end of the pier from off the dock. The firemen soon got there and a large crowd. The bark was hauled down to the north of the slip, after some trouble, and there laid until the fire was put down, and until it was safe to haul back again, or to the opposite side, and there we made fast to the opposite side of the dock. She laid there until I left her, Monday, April fourteenth.

6th int. What kind of a wharf was Battery wharf for discharging a cargo of cotton, and what kind of a wharf is Lewis wharf in this respect? State fully.

(Objected to, on the ground that the character of Battery wharf is incompetent.)

Ans. Battery wharf is a pretty large wharf, and as I should think a good wharf for discharging cotton. Lewis wharf has some wooden store buildings that cover such a portion as makes it inconvenient for discharging cotton and putting the marks separate for getting out a large quantity of cotton.

7th int. What was done, if you know, with the cotton discharged on Monday? How was it marked, if you know; how was it placed on the wharf?

Ans. I know but very little about the cotton discharged on Monday; for after we got down there I was employed in clearing up decks. I know nothing. I was not on the wharf on Monday. I was not at work then on the wharf. I think not. I don't recollect being on the wharf unless it was something about the vessel.

8th int. What was done with the cotton discharged on Tuesday, and how was it placed on the wharf, and how long did it remain on the wharf?

Ans. I see about the stage, the captain about part of the time, and the mate part of the time, showing the men who wheeled away the cotton on handcarts where to place it. I have nothing to say about the placing of the cotton. I was employed mending the cotton bales. I can't say how long it remained on the wharf, for the remains of it were there when I went home on Monday, the fourteenth. Some of it was left, some of it was hauled away, and some of was damaged and consumed by the fire.

9th int. State, if you know, why no cotton was discharged on Wednesday.

Ans. I say that I know there was not room on the wharf to discharge all of it. The stevedore did not wish to commence unless he could discharge all.

10th int. Was any cotton removed from the wharf Wednesday; and if so, how much, and whose?

(Objected to, except so far as relate to cotton taken by parties to the suit.)

Ans. I don't know how much was taken Wednesday. I know that there was cotton taken. Mr. Goddard and Pritchard's folks took away some. There was cotton marked Lincoln, cotton marked P. M. C., and other marks I don't know anything about. I know those two marks that were taken away.

11th int. Did Goddard & Prichard remove any cotton on Monday, Tuesday, Wednesday, or Thursday, if you know? If so, state how much on each day.

Ans. They moved cotton Tuesday and Wednesday. I don't know how much, and what marks. They moved some cotton Thursday. I didn't see either of them until after the fire. The cotton was moved by hand trucks, and their clerk was about there. It is the man now present—Andrew Solis.

12th int. What was Mr. Solis doing?

Ans. He came past where I was mending bales, and I supposed he was there to see to the moving of that cotton.

13th int. At what time of the day was this?

Ans. I am not able to state the exact hour. I should think it was about eleven o'clock. I mean to say I saw him Monday, Tuesday, Wednesday, and Thursday. I don't mean to say I saw him taking away cotton on Monday. I did see him on Tuesday, Wednesday, and Thursday, taking away cotton. When I said I saw him at about eleven o'clock, I had reference to Thursday.

14th int. Where was G. & P.'s counting-room or store; how far from where the vessel lay?

Ans. I don't know where his counting-room was or is now. The cotton was stored, some of it in that block of buildings running down the wharf.

15th int. At what time on Wednesday did you see G. & P.'s clerk on the wharf? Did you speak to him on that day, or hear him say anything? If so, what?

Ans. I see him on the wharf several times Wednesday; I don't recollect any particular hours. I think he was there pretty good part of the time about the wharf. I was there nearly all the time mending cotton bales. I did speak with him several times. I don't recollect his saying anything about taking away cotton, except about my mending some few bales.

16th int. Did you hear any conversation between G. & P.'s clerk, Solis, and the captain or mate, on Wednesday? If so, what?

Ans. Nothing concerning the cargo that I recollect.

17th int. How was G. & P.'s cotton placed upon the wharf on Thursday?

Ans. I am not able to say particularly about his cotton further than that the marks were put separately. It was the understanding that they were to be put separately; but I cannot say that they were; the captain and mate were out on the wharf to see it done. I can't say particularly as to his any more than all the others.

1st. cross-int. How soon after the vessel had been fastened at the wharf was the unlading commenced?

Ans. I am not precise about the hour, but I think it was past 3 o'clock: it was past their working hour.

2d cross-int. Whether Goddard & Prichard, or either of them, were, within your personal knowledge, upon the wharf during fast day, the 10th of April?

Ans. They were not, to my personal knowledge.

3d cross-int. How soon after the unlading on the 10th of April was complete did the fire commence, by which the cotton was more or less destroyed?

Ans. About two hours—perhaps a little more. They had done unlading a little after one, and the fire commenced after two.

4th cross-int. On what day and at what hour of the day did you first learn or know that the master intended to unlade on fast day?

Ans. Wednesday night.

5th cross-int. Whether or not the cotton put on board the bark at Apalachicola by the different shippers was stowed without discrimination as to the marks and numbers?

Ans. It was stowed where they could get bales to suit best.

6th cross-int. Whether or not, to your knowledge, the mate kept an account of the marks and numbers of the different bales of cotton as they were unladen?

Ans. He did.

7th cross-int. Whether or not the mate took receipts for any of the cotton which was carried from the wharf on Tuesday or Wednesday?

Ans. He did from trucks from the cotton that was trucked away.

8th cross-int. Whether or not was any cotton unladen from the bark on Tuesday afternoon or on Wednesday?

Ans. There was not.

9th cross-int. How many bales of cotton, if any, were taken away on fast day? By whom were they taken, and at what hour of the day, and to whom did they belong?

Ans. I don't know how many bales were taken away. They were wheeled away on hand trucks by Irishmen. I suppose near eleven o'clock. It was taken by the same persons who took away the cotton belonging to Goddard and Prichard on the other days; it was the same men and his clerk. None was removed except by hand truck, on fast day, to my knowledge.

10th cross-int. Whether the master and the chief mate, or either of them, to your personal knowledge, were upon the wharf at the time the fire commenced?

Ans. They were neither of them on the wharf at the time the fire commenced. The mate was the first man who went on to the wharf to put the fire out.

11th cross-int. Whether or not the stevedore and his men who unladed the bark, or any of them, were upon the wharf at the commencement of the fire, so far as you have any personal knowledge?

Ans. I did not see the stevedore or any of his men on the wharf at the time the fire commenced.

12th cross-int. On what day and at what hour of the day did you finish mending the bales of cotton?

Ans. I knocked off mending bales to go to dinner on fast day.

13th cross-int. When the bark hauled off to avoid the fire, how many of the officers were on board?

Ans. Captain, mate, and myself.

E. H THOMPSON.

A true copy. Attest:

C. W. LORING, *Com'r.*

This libel was entered at a special district court held on said eleventh day of April, A. D. 1856, and thence was continued from time to time to this twenty-first day of October, A. D. 1856, and now, after a full hearing of the cause, upon the facts proved and arguments of counsel, and mature deliberation thereon had, it is ordered, adjudged and decreed by the court that said libel do stand dismissed with costs for claimants.

Thereupon an appeal was claimed by libellants in open court, which was allowed by the court.

Then personally appeared the said David Goddard, of Roxbury, in the district of Massachusetts, merchant, and produced for surety Patrick Riley, of Boston. And the said Goddard & Riley, submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of four hundred dollars unto the said claimants, that the said libellants should pay all costs and expenses which should be awarded against them in this suit upon the final adjudication thereof, or by any interlocutory order.

I, S. E. Sprague, clerk of the district court of the United States, within and for the district of Massachusetts, hereby certify that the foregoing is a transcript of the record in said cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said court, this —— day of November, A. D. 1856.

[L. S.]

S. E. SPRAGUE, *Clerk.*

Report of the Proof.

DAVID GODDARD ET AL.
versus
BARK TANGIER.

Evidence introduced by the libellants: 1st, Six original bills of lading, as in libel; 2d, A plan of Lewis wharf; 3, Evidence—

Andrew Solis.

I am a clerk of Goddard & Prichard; have been for six months; I was at Lewis wharf on Monday, April seventh, 1856, after the Tangier had hauled in. This was the day after her arrival in port. I first saw the vessel at Battery wharf at nine o'clock, Monday morning. Saw her at Lewis wharf at three and a half o'clock, afternoon, on the same day; they were at this time taking cotton from the deck. I took off the marks of our cotton as it came from the deck. I told the mate I wanted our cotton put in good order and separate, or we should not take it. There was a house on deck; some twelve bales were on the main hatch; do not know how many were in the house; did not on Monday give the marks of the cotton, which belonged to Goddard & Prichard, to any officer of the Tangier.

I told the stevedore the marks must be kept separate; I did not give him the marks on Monday. The stevedores separate the cotton as a part of the business of unlading. The cotton taken from the bark on Monday was placed upon the wharf—the marks all mixed up.

I had no instructions from Goddard & Prichard in relation to the cotton on Monday, until after I came from the wharf, at about six and an half, p. m.

The stevedore began to unlade between three and four p. m. Do not know the hour at which they stopped unlading on Monday; cannot say how many bales were taken from the bark on that day.

On Monday, at six and a half p. m., Goddard & Prichard gave me directions to take two marks, "Como," one hundred bales, and "R. L. P.," one hundred bales. Goddard & Prichard had a store on Lewis wharf, No. 33 and 34, and a right of storage in two others, No. 35 and 36, and No. 23 and 24.

Tuesday morning, I went to the vessel and saw they were mixing the marks. I told the mate they must have the marks separated, and I also told the stevedore. The mate said it was not his place to see it was separated. I told him it was his place to separate them, and that they must be kept separate. I merely told him he must keep our marks separate; did not give him our marks.

The mate was standing upon the stage in the gangway from which the cargo was unladen, with a book in his hand. When we took cotton from the wharf to the store, he took a memorandum.

He saw the bales we took; after the bales were placed upon the hand-truck he might have seen the marks and numbers. I took on Tuesday about seventy-five bales, marked "Como" and "R. L. P." Some of them were put into store No. 23 and 24; some into 35 and 36. No. 23 and 24 was the store of E. Davison, wharfinger; 35 and 36 belonged to Appleton. Fourteen or fifteen men were with me on Tuesday receiving cotton. They discontinued the unlading at one p. m. on Tuesday; they did not unlade in the afternoon; when I went to the bark in the morning, I gave to one of the men in the employment of the stevedore a list of the marks, and told him to keep them separate. They were all mixed, the marks running together. I refer to the bales I took on Tuesday. The bales marked P. M. C. were mixed with our cotton; our marks run together. I told the mate he must keep the marks separate; each of the marks separate, or we would not receive it. The cotton of Goddard & Prichard was mixed with others, with cotton marked D. L. & S. Lincoln, and other marks, which I have forgotten; do not know how many bales were taken out of the vessel up to one p. m. on Tuesday; I did not take on Monday any cotton of Goddard & Prichard; do not know [how] many men the stevedore had with him. The second mate was mending cotton on Tuesday. Wednesday morning, the ninth of April, went to the wharf and finished storing "Como" and "R. L. P"—all that I could get of those marks. I began about eight o'clock, put the cotton received on that day in the stores 35 & 36 and 23 & 24; took away on Wednesday about seventy-five bales. The cotton was not set apart on Wednesday more than the day before. We had trouble in picking out what I did take away; worked until four and an half, P. M. Six or seven is the usual time at which the men stopped work; had not received all our cotton. At eleven and an half o'clock, A. M., I went to the counting room of Goddard & Prichard, Mr. Goddard told me to remove all our cotton that day; I went to the wharf and worked until four and an half, had taken all our cotton which we could get at, without overhauling other cotton; carried away all the cotton we could get at, had with me fourteen or fifteen men, enough to take away all our cotton, if we could have got at it. There was no unlading on Wednesday; on Tuesday nothing was said to me as to the time at which the unlading would be resumed. On Wednesday the mate was taking an account of marks as the cotton was removed from the wharf.

Wednesday morning I asked the mate when they were going to finish discharging; he said the stevedore had sent down word that he was going to finish discharging on fast day. I told him it was not customary for vessels to discharge on fast day; he said he knew nothing about that; that the stevedore had sent word he should discharge, and he supposed he would finish discharging that day.

I told him if Mr. Appleton would open his store, into which we

were putting cotton, and the men were willing to work, perhaps I would take the cotton.

In the afternoon of the same day, I told the mate I should not take the cotton because Mr. Appleton would not open his store; told him I should not be down on Thursday. This conversation was on the wharf; the mate was there most of the day; I told him he had better not discharge until Friday, and that we would then receive the cotton as fast as he could put it out.

On Wednesday night Mr. Goddard gave me written directions as to my work for Friday; gave me none for Thursday. When Mr. Goddard gave me the written directions, I told him I was going to receive the Nancy J. Brayton's cotton on Thursday. He asked me if the men were willing to work; I told him they were willing to work to get that cotton in; that cotton had been two days on the wharf.

The written instructions are identified by the witness and put in, and are as follows:

"I wish Andrew to turn out and weigh early Friday morning the balance of Dwight's cotton—E. L., 17 bales. Then store balance, R. H. Allen and Tangier, sending off J. B. E., 32, and J. T. R., 41. Receive if in good order, from Tangier, D. L. and S.—50 bales in our cellar—then receive and store our cotton per harvest."

The master and mate were both upon the wharf Wednesday afternoon, when I broke off work—I told Brewer, the master and mate being within ordinary hearing distance. I told Brewer, captain and mate that we could not find any more of our cotton, and so must break off. It was between three and five and a half, p. m. on Wednesday, when I told the mate I should not be there on Thursday; Brewer was there and other men weighing cotton. On Thursday, the tenth of April, I was at the Tangier; was there before the fire; was there at about nine a. m.; saw the captain on the top of the cotton, saw the mate; asked him if any of my men had been there; he said they had been there, and he had told them I should not be down that day; I gave the captain an order for some cotton, a written order made by Dutton, Lamb & Stearns, for the delivery of cotton to Goddard & Prichard; this cotton was not any part of the cotton contained in our bills of lading—the order referred to fifty bales. Mr. Goddard gave me the order after six o'clock on Wednesday evening; the captain asked me if I wanted the cotton then; I told him no, I only gave it to him so that he might know where to deliver it. I was at the Tangier, at this time about fifteen minutes; not there again until after the fire broke out; I was at the Nancy J. Brayton and in the store of Goddard & Prichard during the forenoon. When I went out at the back side of the store at about two and an half o'clock; the fire was under way, five or six bales were on fire; the captain of the Tangier was throwing water. I took no cotton away on Thursday; I

sent three men to take five bales, R. L. P., to put into the cellar of store 23—24. This was about twelve, a. m. I directed no other to be taken that day. One o'clock, p. m., is the usual dinner hour for the men, truckmen, and laborers. At the time the fire broke out I did not notice whether the bales were all mended or not. So far as I know only the men who took the five bales, and those who inquired for me in the morning were on the wharf that day. The second mate was occupied in the morning in mending bales. I only saw the captain on the wharf at the time of the fire; the men of Goddard & Prichard were not on the wharf that day, except as I have stated. The stevedore or his men were not upon the wharf when I first saw the cotton on fire.

Cross-examination.

I am twenty-one years of age, have been clerk of Goddard & Prichard since twenty-fourth of December, eighteen hundred and fifty-five; before that I was at sea eleven months; prior to going to sea, was clerk with Harrod, Darling & Company, three years, on Central wharf; their business was the same as that of Goddard & Prichard. On Thursday morning I took between eighty and ninety bales of cotton belonging to Goddard & Prichard from the schooner Nancy J. Brayton, began at about nine and an half o'clock, and left off at eleven and an half—carried it from Lewis wharf across the wharf to the wharfinger's store; Goddard did not object to my taking cotton Thursday; saw him on that day after the fire, about three and an half o'clock, had not seen him during the day until that time; the cotton, the 80 or 90 bales of which I have spoken, was removed by hand trucks; the five bales was removed in the same way. I was on the front side of the wharf when I sent the men to get the five bales. The captain said nothing about discharging when I saw him on Thursday morning; at this time the stevedore's men were at work on board the Tangier; I said nothing more than I have stated. Goddard gave me the written instructions of which I have spoken about six and an half Wednesday evening. He gave me no other directions. The men were willing to work on the Nancy J. Brayton cotton. I do not think they would have gone to work on the Tangier cotton; they were willing to work on the Brayton, because I had promised to take it away the evening before. I did not carry any orders from Goddard & Prichard to the master or mate of the Tangier on Thursday. I did not forbid the discharge; did not know I had any right to do it. Did not send to Goddard & Prichard; did not know where they lived. I told the mate to separate our cotton from the others, and to keep our different marks separate. There were twelve different marks; mate said it was not his business; I thought it was; I have seen other mates do it; all the cotton I took was from a space between two buildings; the seventy-five

bales I took on Wednesday had others mixed with it; won't swear how many; the bulk of the seventy-five I took on Wednesday were all together in the same place, mixed with other cotton. I do not know how far from the vessel. Two hundred or three hundred bales of the Tangier cotton were left upon the wharf Wednesday night. At the time of the fire, all the men, fourteen or fifteen came out the back door of the store; we had been there since eleven and an half o'clock; they came back from dinner about one and an half; we had been engaged in weighing cotton. Their scruple about work was overcome, because I said nothing about it. The cotton which we weighed was put out of doors on the south side of the wharf, and we were just going off at two and an half o'clock, when the fire broke out; I put the cotton out of the store, so that we might have more time and room on Friday for other cotton. I do not remember any conversation with the mate about putting the cotton out in the morning of Fast Day, and having a good time in the afternoon; won't say that I did; won't say anything about it. Five or six bales were on fire when I first saw it; cannot tell anything about the origin of the fire; do not know what I did in the store during the half hour the men were away at dinner.

The direct examination resumed.

The bark Tangier was on the north side of the wharf, the cotton I weighed on Thursday was put out on the south side.

Cross-examination resumed.

The schooner Brayton lay ahead of the Tangier—the cotton was ahead of the schooner—could not see the Tangier from the schooner.

Direct.

Goddard & Prichard live out of the city.

Nathaniel Brewer.

I am a clerk of Goddard & Prichard; have been for four years and two months. The master of the Tangier was in the counting-room of Goddard & Prichard Monday, April seventh, eighteen hundred and fifty-six, at about ten o'clock, a. m. He said the Tangier was off Battery wharf. I said to him I thought we should like to have him haul in at Lewis wharf. I said I should like to have him see Goddard & Prichard. He replied he was going up town, and would call again by and by. He came in about an hour afterwards, and had a conversation with Prichard about moving the bark to Lewis wharf. The master agreed to do it, if Goddard & Prichard would pay the expense. On Tuesday I did not go to the bark. Wednesday afternoon I was upon the wharf, had orders to

have all the cotton of two marks, "J. B. R. and L. T. R.," which was ready for delivery, weighed, and sent to the Maine depot. Between three and a half and four o'clock, p. m., I went to the wharf, and after overhauling some cotton, we found fifteen bales of the two marks which were weighed and sent off that afternoon. There were no other bales of these two marks found. We had to overhaul considerable cotton to get the fifteen bales out. I took no notice of the marks of other cotton; was not interested in the matter. The bales which I took away were between the two wooden buildings. I cannot describe the other cotton. We stopped work at four and an half or five, p. m. Solis weighed the fifteen bales. I went round picking them up. I was upon the wharf when Solis knocked off work. It was earlier than the usual hour at which work is discontinued. They did so, because there was no more of our cotton. I saw Solis and his men looking for other cotton of ours. I had no conversation with the master or mate relative to discharging. I saw no person mending cotton on Wednesday. One or two bales received by me, I should have called a mender's attention to had I seen him. Most of it was in good trucking order. I was on the wharf on Thursday, about nine, a. m.; did not go below the wharfinger's store. Did not work at all on that day. On Wednesday had men and teams adequate to take away more than fifteen bales.

Cross-examination.

The fifteen bales were sent to Webster, the treasurer of the New Market Company. He wanted about ninety bales; about seventy of the two marks of which I have spoken. Thirty-two and forty-one, I think, I had orders to send off. I do not know where the seventy-five bales taken by Solis each day, Wednesday and Tuesday, were taken from.

Michael McDonald.

I worked for Goddard & Prichard in April, eighteen hundred and fifty-six; received cotton from the Tangier on Tuesday and Wednesday, the eighth and ninth of April, about one hundred bales; put some into store No. 24, some into 35. Knocked off work on Wednesday, about five o'clock, p. m. We had no more work to do. It was earlier than is usual to stop work. There was cotton on the wharf; no more with the marks of Goddard & Prichard. We had sixteen men, enough to have taken away all we had. We examined for the cotton of Goddard & Prichard; four or five persons examined. I examined: there was no more that I could see, or any of the rest of the men; no unlading on Wednesday: two or three hundred bales on the wharf Wednesday night: there was cotton in with other marks; P. & C. and two other marks which I do not remember; some of our cotton was mixed in with cotton of other merchants. The mate was there at the time the fifteen bales were

taken: was there on Tuesday. Solis asked the mate when he was going to finish discharging. The mate said the stevedore had sent word he was going to discharge to-morrow. Solis said it was not customary to work in Boston fast day. The mate said he could not help it. Nothing more was said. Thursday morning I was at the bark about seven o'clock; asked the mate if he had seen Solis. He replied no, and that Solis had said he should not be there.

Cross-examination.

I was in search, on Tuesday and Wednesday, of marks "Alice" and "Ocala;" do not know how many of these marks Goddard & Prichard were expecting, nor how many they got; they got 150 bales in all; cannot say how many we moved to find ours; we got in between the bales to look; the marks are on the sides; I worked all fast day forenoon weighing cotton; the store of Goddard & Prichard was pretty well filled; in the store of Appleton, where we were putting this cotton, that of the Tangier, we had plenty of room; do not know in what way the fire happened; I was in the store of Goddard & Prichard when it began.

Daniel Mahoney.

I worked for Goddard & Prichard in April, 1856; on Tuesday and Wednesday, the eighth and ninth, I was at the bark Tangier; assisted in hoisting cotton into the store—Appleton's store and that of the wharfinger; we left off work between four and five o'clock, p. m., on Wednesday, before the usual hour; we could find no more of the marks we wanted; these were the *McD.*, *Alice*, *Ocala*, *Como;* we could get no more of these marks on Wednesday; none of the marks which we had to store could we find; the marks were those I have mentioned; Solis was about the wharf at the time we left there; some of the cotton we carried away was mixed in with that of other people; we had to shift the bales; we moved perhaps three or four in one place, and two or three in another. I was not out upon the wharf until Wednesday afternoon; I was not upon the wharf on Thursday.

Cross-examination.

I was at work in the store of Goddard & Prichard so long as we could get cotton with our marks to store; I was on the wharf about half an hour Wednesday afternoon; cannot tell how many bales we got at that time; we had to shift two or three bales to get one; cannot say how large a space the cotton was in; we were seeking for more than the four or five marks which I have mentioned; I should know the other marks should I see them.

Michael Driscoll.

I am in the employment of Scott and Manning, cotton brokers;

have all the cotton of two marks, "J. B. R. and L. T. R.," which was ready for delivery, weighed, and sent to the Maine depot. Between three and a half and four o'clock, p. m., I went to the wharf, and after overhauling some cotton, we found fifteen bales of the two marks which were weighed and sent off that afternoon. There were no other bales of these two marks found. We had to overhaul considerable cotton to get the fifteen bales out. I took no notice of the marks of other cotton; was not interested in the matter. The bales which I took away were between the two wooden buildings. I cannot describe the other cotton. We stopped work at four and an half or five, p. m. Solis weighed the fifteen bales. I went round picking them up. I was upon the wharf when Solis knocked off work. It was earlier than the usual hour at which work is discontinued. They did so, because there was no more of our cotton. I saw Solis and his men looking for other cotton of ours. I had no conversation with the master or mate relative to discharging. I saw no person mending cotton on Wednesday. One or two bales received by me, I should have called a mender's attention to had I seen him. Most of it was in good trucking order. I was on the wharf on Thursday, about nine, a. m.; did not go below the wharfinger's store. Did not work at all on that day. On Wednesday had men and teams adequate to take away more than fifteen bales.

Cross-examination.

The fifteen bales were sent to Webster, the treasurer of the New Market Company. He wanted about ninety bales; about seventy of the two marks of which I have spoken. Thirty-two and forty-one, I think, I had orders to send off. I do not know where the seventy-five bales taken by Solis each day, Wednesday and Tuesday, were taken from.

Michael McDonald.

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taken: was there on Tuesday. Solis asked the mate when he was going to finish discharging. The mate said the stevedore had sent word he was going to discharge to-morrow. Solis said it was not customary to work in Boston fast day. The mate said he could not help it. Nothing more was said. Thursday morning I was at the bark about seven o'clock; asked the mate if he had seen Solis. He replied no, and that Solis had said he should not be there.

Cross-examination.

I was in search, on Tuesday and Wednesday, of marks "Alice" and "Ocala;" do not know how many of these marks Goddard & Prichard were expecting, nor how many they got; they got 150 bales in all; cannot say how many we moved to find ours; we got in between the bales to look; the marks are on the sides; I worked all fast day forenoon weighing cotton; the store of Goddard & Prichard was pretty well filled; in the store of Appleton, where we were putting this cotton, that of the Tangier, we had plenty of room; do not know in what way the fire happened; I was in the store of Goddard & Prichard when it began.

Daniel Mahoney.

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Cross-examination.

I was at work in the store of Goddard & Prichard so long as we could get cotton with our marks to store; I was on the wharf about half an hour Wednesday afternoon; cannot tell how many bales we got at that time; we had to shift two or three bales to get one; cannot say how large a space the cotton was in; we were seeking for more than the four or five marks which I have mentioned; I should know the other marks should I see them.

Michael Driscoll.

I am in the employment of Scott and Manning, cotton brokers;

I went to the bark Tangier, at Lewis wharf, when she hauled in, before she landed anything to sample cotton. I do not recollect the marks I went for. On Tuesday, eighth of April, I went to see cotton of Dutton, Lamb and Stearns, to draw samples from them; there should have been fifty bales of that; these bales were, a lot of them, at the bark's gangway.

"Mr. Choate objects to evidence in relation to bales of cotton, other than those named in the libel."

I found the bales scattered about, those which I did find; I did not sample the entire fifty bales, but only, I think, about thirty-five, which were all I found of the mark, D. L. & S. I found quite a number of bales abreast of the ship, and in the eastern passage-way found some more—they were not unloading when I was there.

Cross-examination.

I went after dinner on Tuesday. Abreast of the vessel there might have been five, might have been twenty bales. In the eastern passage-way may have been four or five, may have been ten bales —those abreast of the vessel were not all together.

Direct examination, resumed.

Those I found abreast of the vessel were more or less mixed with other cotton; the bales in the eastern passage-way not standing by themselves.

Cross-examination, resumed.

They were as near together as they could be, perhaps, considering the crowd.

Willard Clifford.

Was truckman in April, 1856, for Goddard & Prichard; I trucked also for others; at three and an half, p. m., April 9th, went to the bark Tangier for seventy-three bales of cotton; received fifteen bales, and a receipt was given; had men, six trucks, and two wagons—teams enough to take all the cotton; carried the fifteen bales to the Maine railroad; did not take the others because not out of the vessel; we had to overhaul a great lot to get what we did—to overhaul the rest to get ours; we were about an hour getting fifteen bales—we, that is, Goddard's man, the mate and myself; the mate knew what we were after; he said there was no more out, the rest would not be out until to-morrow; I told him to-morrow would be fast day, and we should not work, that we should not receive it to-morrow; Mr. Goddard's man, Solis, said the same thing to the mate; had force enough to carry the seventy-three bales; if we could have got our cotton there was time enough.

Cross-examination.

I cannot state the marks; they were certain particular marks; do not remember the marks upon any bales I did not take; Goddard told me they must go to the depot that night; did not say to me why they must go; it was none of my business, I think I was at my house fast day forenoon; went myself on to the wharf to search for cotton on Wednesday; Solis, the mate, and Goddard's men searched; I teamed for other people at the same time, but not on Wednesday afternoon; the mate repeated he was going on, when I said it was fast day.

Cornelius Donovan.

I am a laborer; worked for Goddard & Prichard in April, 1856; was on Lewis wharf, Wednesday, the ninth, about nine, a. m.; was employed that day in storing cotton from the Tangier; left off work about five, p. m., earlier than usual to stop work, because the cotton was not accessable; I left off because no more to do; we work by the hour; work as late as we can get anything to do; some leave off at six, some at seven, some at eight; we work until ten, if need be; I went on to the wharf at eleven o'clock, a. m., again at five, p. m., when we left work, but I did not overhaul cotton; I came out of the store at eleven, and took a car, and was shifting the cotton; Solis told me a bale which I had was not his; the cotton was in poor order; that bale, the one which Solis said was not his, came from the place in front of the opening.

Cross-examination.

Cannot say how much cotton was got between nine and eleven; was on the wharf about ten minutes at this time; I was shipping cotton—putting bad bales aside; put aside ten bales; it is a general thing to have some bales in bad order; they must repair them before we take them; I saw a man repairing; he was called the second mate; I remember the marks; I shifted some marked McD., some Alice.

Thomas Manning.

I have been a cotton broker for nine months. Before that I was merchandise clerk for Goddard & Prichard. I know the position of Lewis wharf—the plan exhibited to me is correct. I have been employed putting cotton from vessel into stores. Fifteen men can put into stores on that wharf, into Appleton's store, or into that of Goddard & Prichard, in twelve hours six hundred bales; in ten hours five hundred—into the store of the wharfinger a little less, say forty-two to forty-five bales an hour. I was with Goddard & Prichard four years; have taken in cotton for them. Between the two buildings upon the wharf there is room to put two hundred

bales in each place; cotton bales are generally mended on the breast of the bale, on the side we draw samples; sometimes on the head samples are taken. The bales are sometimes marked on the head. Texas cotton sometimes so marked, but nothing on the breast.

Cross-examination.

Received whilst with Goddard & Prichard about two thousand bales a year, I think. As a general thing, I made it my business to see when the vessel arrived, and attended to the getting the cotton. Sometimes we had notice of its arrival, and sometimes not. I generally got the cotton away as soon as the vessel was discharged. I did not mean it should lay any longer. It may at some time have lain upon the wharf a day or two. I received my information as to arrival of vessels from morning papers, stevedores, &c. When I had custody of vessel and delivery of cargo, I always made it my business to notify consignees of the arrival of the vessel and where she lay. It is the ordinary practice of the master, on arrival, to discharge as fast as he can. Consignees sometimes suffer cotton to lay upon the wharf, and prevented discharging. It did at that time, that is, of the fire upon Battery wharf. There has been quite a revolution since the fire on Battery wharf in this respect. I have known captains detained for hours—cannot say I have for a day or two. Captains usually go on as soon as the impediment is removed; sometimes they do not go on so soon if late in the day; the only notice I ever gave after the first was to hurry up some dilatory consignee.

Direct, resumed.

I have not attended the discharge of a vessel since September, 1855. After delivery from shop, in one or two instances, I think, I have left cotton upon the wharf without putting it in charge of any one, but in a majority of cases I always left a watch, unless I made a memorandum of the amount, and gave it to the wharfinger, or notified consignee. After delivery to me for Goddard & Prichard, my custom was to watch—there were some exceptions.

After a discontinuance of the unlading, the master does not resume except at usual business hours. I never knew a case in the month of April when they began to resume unlading after four o'clock p. m., unless in case of mere temporary stoppage.

Cross, resumed.

Some cotton usually requires repairing when it comes out of the vessel. Should hardly think it necessary to have a watchman at noon—usually watched myself while the men were at dinner. If I went away, I should speak to the second mate or some of the crew, and ask him to keep an eye to it. Mr. Choate says, whilst attending to his other duties? The witness assents.

By the court.

I never delivered but two foreign cargoes, Calcutta and Smyrna. I think cotton and merchandise not liable to damage by exposure was not put under cover, except Sea Island cotton; other goods are covered. I should not think I was under obligation to take charge of it after I had notified them, the consignees, that it was all out.

Direct, resumed.

Cotton to a much greater extent in bulk than iron is left out. Cotton is an article more abused than any other. Iron is left upon the wharf a much longer time than cotton; wet cotton is not in fit condition to be weighed until dried or delivered. Russia sheet-iron is removed immediately. It comes in bundles covered with matting.

George Phippen.

I am porter of William Appleton; have charge of his store on Lewis wharf. Goddard & Prichard hired a loft before the tenth of April, 1856, some two or three days before the fire. The loft would store five or six hundred bales. I know there was cotton in the loft the day before fast day. I have been on the wharf sixteen years. Cotton ships have discharged there every year.

TESTIMONY OF THE CLAIMANTS.

Daniel Pitman.

Stevedore for 22 years, and work for Train & Com'y; have discharged cargoes of all kinds; I know only Sunday and the Fourth of July as holidays; I discharge every other day all alike; I had an hundred men discharging last fast day; this has been the general custom ever since I was a stevedore; I worked upon a ship and the cargo on the wharf same as any other day; the custom is in regard to notice, when the vessel is hauled up to the wharf, the captain goes or sends to the consignees; this is all the notice I know of; we generally separate the cargo as well as we can.

(In reply to the court)—It will get mixed a little.

Cross-examined.

I did discharge perishable goods last fast day; Train did not know whether I was at work or not; he had given no direction; he places all under my care; to my knowledge he exercises no supervision of the labor; I work, as everybody does, on fast day.

Train has from five to ten stores on Constitution wharf; the vessel has a right to unlade on fast day; I was never requested to lie idle fast day; if anybody had requested it, to accommodate, I might have done so; Train's vessels received and carried away last

fast day; Guild had four trucks that day on that wharf; he also trucked to a schooner going to Bath; if a merchant requested us on any day to keep his goods dry, we should do so, and accommodate him; the consignees have original notice; we discharge perishable goods without new notice; at night Train tells us to put all under cover in the night; should expect to cover perishable goods; crates, bar iron, and cotton, should have left on fast day, uncovered and unguarded. I never leave any man's goods on the wharf without custody, without watch; my usage, not to leave perishable goods; crates, bar iron, molasses, cotton, logwood, mahogany, these goods I should leave on the wharf without notice on fast day; have no recollection of consignees taking goods except on last fast day, Mr. Guild's men; I unladed salt last fast day and put it in store.

George Hardy.

Stevedore nineteen years; have discharged various cargoes; I know the custom; if discharge partly finished, I should go on of course on fast day, I always do; I think every one does; I should go on under the original notice; I have worked on more fast days than I have been idle.

Cross-examination.

Business falls off that day about one-half; my business requires me to keep at work; I have never known an instance where people having unfinished business to do have closed their stores or knocked off work, not one. I have never known any notice after the first; when the wharf gets blocked up we stop, fast day or not; I should do so.

Fast day appears more like Sunday than any other day; majority of stores are closed; I never discharged against objection of owner of goods. No instance where I resumed on fast day, after an interruption; don't work unless pressed; general business falls off three-fourths, carting three-fourths, discharging one-half, stevedores one-tenth; vessels not finished discharging don't fall off; as a general thing, much more business of all kinds done on fast than on Sunday; so of the 4th of July; that is like Sunday.

Direct, resumed.

Never knew of an instance of a merchant's asking us to stop on fast, when began before; always press to continue; always block up the wharf for a few hours; never give new notice in such case; we hurry up dilatory merchants.

Lot Day.

Stevedore twelve or fourteen years; various owners, foreign and

domestic, I have worked for; I know custom of discharge; if we have began to discharge, we go on fast day, as usual; general custom go on, on fast day; when detention should begin and finish, give no new notice; don't know of second notice, except to get out of the way; no new notice.

Cross-examination.

Should not commence a new vessel on fast day; don't remember but one instance of being blocked up and resuming on fast day; one case of molasses; if wharf blocked up Wednesday night, should not go on until cleared; should if we had room, unless told not to; if owners objected, should stop; never had objections; when laborers have work they work on fast day; not so much work done on that day; some of the stores upon the wharves closed, some not, majority closed; have known consignees to send for goods on fast day; not so much trucking on fast as other days; I see a few teams on the wharf on that day, less than that on other days; never had extra pay on fast day; can't tell how many fast days I have worked.

Nathan W. Bridge.

I am a ship broker; have been nineteen years; know the usages of this port as to discharging vessels; when vessel arrives we send to consignees that the vessel has arrived, and is at the wharf, and thereupon we commence discharging her; that is, *given* the notice before discharging begins; no other notice necessary; considered in full through operation; if discharge broken, sometimes give new notice, as follows. If choked up we send to hurry up; so of perishable articles; don't consider it necessary, but out of accommodation, and in preference to storing it; this is never done in case of goods not perishable; in discharging cotton and molasses, we sometimes send to consignee to take them when blocked up, and to take them away; if discharge resumed, we give no new notice; this is the universal course.

In all cargoes not perishable, iron, cotton, &c., we go on fast day and put them on the wharf; we even commence on that day; think this is the general custom; not so of perishable goods; think there is no difference between fast and other days, in cotton, lumber, &c.; never give any new notice; go on same as on any other day; they don't take away so many goods on fast day as on other days; but if discharging, no change; the discharging is given up to stevedores and truckmen; as a general thing, no cessation from discharge on fast day, of lumber, iron, &c.; conscientious captains are exceptions; every captain would go on if behind-hand; no care of molasses or lumber, no care taken of it; for things liable to theft, we recommend a watch during the night; that watch is confined to

the night; cargo taken out in the day if cotton; should not put a watch over it for an hour and an half.

Cross-examination.

Do not recollect any one particular instance of bale goods being put upon the wharf; a large majority of wharf stores closed in the afternoon of fast day; in the morning, some more than one-half closed; those who have business to do, do it on that day; there are instances of consignees taking away goods; not regarded as day of taking away; less trucking, not more than one-fourth as much trucking done; no difference in discharging at all; I have always kept my place open fast day forenoon; I had more of a crowd last fast day than usual on other days; never knew an instance of deducting pay on fast day.

Never knew of an instance of a vessel breaking off one and an half days before fast, and resuming on fast; have known instances of a vessel breaking off one and an half days, and then resuming; universal custom to leave cotton in the day unwatched; have no watch on cotton in the day time; know no difference between fast and other days in this respect; the laborers who discharge are Irish, and have no respect for the day; the truckmen are mostly American, and don't like to work on that day; consignees generally suspend from trucking goods on fast day; stevedores don't consider it a holiday; truckmen and teamsters, not more than one-fourth work; my place open until one o'clock, p. m.; majority of business men not there; know no instance when cotton left unattended fast day; it is never watched any day.

Direct, resumed.

The wharfinger places the vessel in its berth, and does nothing more; no new notice if we lay by for two or three days, and begin again on fast day; a very small proportion of the merchants who attend church on Sundays attend on fast day; I dismiss my boys for recreation; do not remember an instance of consignees objecting to discharge on that day.

Joseph Silloway.

I am a ship broker and agent; have been for five years; a little different from Bridge; a shipping agent forwards goods; I know the custom of this port in regard to discharge; when a vessel arrives we notify consignees and owners that it has arrived and is going to discharge; if the wharf is blocked up we send for them to carry away; if consignees come and ask us to notify them when their goods are coming out, then we do, but never unless requested, except to hurry up; if choked up and resumed, we never give new notice; if vessel begin discharging, and not discharged as a general thing, *as a general thing* keep right on discharging fast.

Cross-examination.

Forenoon of fast day, work diminishes one-half; latter part of the day, almost wholly; early in the morning truckmen go out as a general thing to work all the forenoon; those who work in the forenoon break off about twelve o'clock, a. m.; truckmen having a job of cotton to move, would probably break off about twelve on fast day; my observation is that truckmen having cotton to move, finish it fast day, in the forenoon; very seldom work in the afternoon; never knew cotton to be unladen fast day against orders of consignees; in our Charter Parties fast day is a working day, so fourth of July; should count fast day as a working day, when fourteen days allowed for loading.

Goods liable to damage, we should be more careful about; consignees always neglect a certain class of goods, say cotton; have great difficulty in getting consignees to take it away; if we have corn on wharf on fast day, should cover it up; don't do anything with cotton, but to watch it at night; on other days don't make this discrimination in favor of perishable goods; we make this difference because merchants would not be prepared to receive; don't discharge on fast day goods liable to damage; would not begin to unlade on fast day; fast day is a holiday with laboring people.

Direct, resumed.

General course of consignees is to leave cotton and to move perishable, and we take notice of this; when vessel has begun discharge fast day, no stop; men who attend worship Sunday, do not attend on fast; not usual to open churches as on Sunday; generally combine several congregations in one house; see notices in papers as to this combination.

Samuel Blanchard.

I reside at Portland, am a sea captain, thirty years of age; have had vessels come to Boston, and conducted discharges; have discharged a great many cargoes; cotton, rum, molasses when we commence discharge or before we begin, notify consignees; never give any other notice except to hurry consignees; if choked up and resumed, never give new notice; if wharf clear, should go on discharging; should give no new notice.

Cross-examined.

A year last March I discharged part of a cargo of cotton at Battery wharf; have unladed fast day in Boston.

Joseph Kinsman.

I reside at Portland; have sailed in and out of Boston, and have

discharged sugar, &c. We give notice when the vessel begins to discharge; never give any other notice, except to hurry up.

Alexander Isburg.

Stevedore; have been for thirty-one years. Have discharged all kinds of vessels for many different owners; know the stevedores' custom; we go right on fast day, if we have room on the wharf; never knew any one to complain of it. We calculate to put the marks together if we can; sometimes they get knocked about, after put on the wharf by us, and some mixed up; all mixed up as it comes out of the vessel; common thing to have bales broken and mended; never give notice except once, other than to hurry up consignees. I went on board Tangier on Sunday, by Battery wharf, which was empty and would hold five thousand bales. There is no better wharf. I gave the job of unlading the Tangier to Brown, after I was engaged to do it; I was engaged to go on Monday morning; I gave the job to Brown on the spot, because I was busy. I was on board the vessel Monday, Tuesday, and fast day; heard Brown tell his men to keep the marks separate on fast day; I saw a man trying to do it; as far as I saw it was separated.

Cross-examination.

I was there on fast day from nine to twelve; heard Brown give this direction two or three times; I saw them carrying the cotton to different places on the wharf; never heard of any one unloading on fast against consent of owners; may have worked one-half of the fast days; most always stopped at noontime, to play ball on the common. The men we employ don't think anything of fast day; the truckmen are not so much out; stores not so much open. In the forenoon one-half of them open; have seen a good many men work fast day afternoon.

Direct, resumed.

I was on Lewis wharf two or three hours; never knew consignee object to unlading on fast day.

Spencer R. Brown.

Stevedore for twelve years; have discharged for all and all kinds of goods; know the custom; should proceed on fast day, if had room—that is the general course. Have discharged cotton; consignees have come down and refused to take it until all out. When the bales come out all mixed up, we separate them and put them as much as possible by themselves. Cotton is on an average in large quantities left on the wharf until a day or two after the ship is unladen.

Cross-examination.

Don't know any difference between fast day and other days; don't think so many men on the wharf as on other days. Some of the stores are shut up and some open on that day. I work sometimes all day discharging on fast day. Had to get the custom officers. Have nothing at all to do with stores.

Charles Sutton.

Stevedore for four years; worked along shore fifteen years. I know the custom; should keep right on fast day, unless stopped—that is the general custom; never was stopped.

Cross-examination.

I worked at rigging formerly. Did not work last fast day, for the first time in ten years. Never discharge on fast when objected by consignee. General habit to knock of at noon, unless had to finish.

Edward R. Washburn.

I am shipchandler's clerk, in the employ of William C. Norton. Remember giving notice in the case of the Tangier. On 7th of April, Monday, between ten and three, went to the counting-room of Goddard & Prichard, and said to a young man there that the bark Tangier had hauled to the north side of Lewis wharf and had commenced discharging. I went to the several consignees at the request of the captain. He requested me to go to each of the consignees and notify them thereof. He gave me the names; I took a list. I went to John Aikin, at the City Exchange. I was requested to go to him; was told where his place of business was; I told the same to a young man there. I went to Crocker & Sturgis, State street; Dutton, Lamb & Stearns, Milk street; thence to Elbridge & Company, and J. H. Pearson & Company—went to every one the captain told me to. I gave only one notice to Mr. Aikin. On the following day gave Goddard & Prichard another notice. On Tuesday, the 8th of April, about ten o'clock, a. m., captain requested me to notify them that the wharf was choked up, and ask them to remove their cotton. I went about twelve, and saw two clerks—one referred me to the other, and I told him the captain requested me to tell them that the men had been obliged to knock off because so much crowded, and ask them to take their cotton.

I have given notices before, and this was like them; I never gave notice twice, except in this case.

Cross-examination.

Did not give notice to Mr. Aikin; gave but one there, at his

place of business. I gave notice at his place perhaps half an hour after having been at Goddard & Pritchard. Think I began my notices with Pearson; gave the same notice to all. The second time I went to Goddard & Prichard the clerk said they were mending cotton with salt bags—he thought it wrong; I had a little talk with him. Remember but one notice at Mr. Aikin's. Think it was a clerk, from his answer. He said he had given his truckmen orders to look after it; think his desk was in the centre, a little to the right as go in.

Samuel H. Sweetser.

Master of the Tangier. We arrived in Boston, Sunday, sixth day of April, off Battery wharf, pretty soon after dinner. There was a plenty of room at Battery wharf. On Monday, at the request of Goddard & Prichard, I went round to Lewis wharf. I asked Mr. Norton to let his young man notify the consignees, as I was to pay off the men. I gave him the freight list; I have discharged cargoes before; just this notice is always given. Begin and continue under this notice; never give new notice, unless choked, when we go to hurry up. As soon as the obstructions [are] all moved we go on without new notice. I never revoked this notice. On Tuesday the wharf was blocked up with cotton, about two-thirds of the cargo out, and some had been taken away; can't tell exactly how many bales out. We used a horse; could stow twenty times as much on Battery wharf. Have heard the testimony of Mr. Ladd, no recollection of having any conversation with him. If I said anything it was that I should go on as soon as I got room.

Mr. Aikin did not complain of where the vessel lay; made no complaint of want of notice. In regard to stowing cotton on the wharf I had no order. It is usual to separate the marks, and the ship does it through the stevedore. Mr. Aikin's testimony as to our interview on Friday is correct. The stevedore told his men to separate and put the different marks by themselves. I had a paper, and the mate had a paper, of the different marks, to enable this distribution to be made. It was made as I designed it should be. On Thursday I looked after it myself, and we put up such piles as had been knocked down by the people who came into the vessel.

The cotton was as fairly separated as is customary in such cases. I went often and looked after it; as much pains was taken as I ever saw. I knew Goddard & Prichard men were upon the wharf, and were looking for particular marks; think Goddard & Prichard's marks were of twelve kinds. We had a watchman during the night, we paid him, that is usual. I never had a watchman in daylight; or knew of such custom. We intend to do it ourselves in the day time—myself and the two mates; I know of no usage to have a watchman in the day.

I don't know the origin of the fire, which took place on the tenth

of April; I found both mates when I came from dinner. The second mate had got back from dinner before I went to dinner; can't tell how it arose—Irish building opposite. Can't tell how much of Goddard & Prichard cotton on the wharf on Wednesday morning. I put the cotton out, did not detain it for freight. There was nothing to hinder Goddard & Prichard cotton having been reached if they had wanted it.

Dutton, Lamb & Stearns might have been a little jammed; on Thursday we took out the balance; I thought I ought to hurry, been delayed then half a day; I supposed the owners would send the vessel to Cuba for sugars; I thought it was too late to go to Cuba; heard no objection to work on fast day. Goddard & Prichard moved cotton from a schooner on that day; I told Solis, clerk of Goddard & Prichard, in the course of conversation, on Wednesday, that we should work on fast day; he said he would take it all away, that they had plenty of stores then; I swear to this distinctly; he uttered not one word of objection; I heard no objection from any one; don't know where the mate was when the conversation was going on; I saw Solis on fast day soon after we had turned to. He asked me if I had seen his men; I said they had not come down. It is unavoidable to have broken bags; we mend them by the second mate; every bag had been mended by the mate before two o'clock on Thursday. On Wednesday I went myself to Goddard & Prichard and to Crocker & Sturgis; there was no occasion to quicken Aikin & Eldridge. Mr. Goddard, on Wednesday, said his young man was at the wharf, and would attend to it. On Monday night I think 250 bales were left on the wharf; I speak from recollection. On Tuesday night, I think 519; I counted it once that night; always count when put in charge of watchman. Wednesday night I counted three times. Monday, counted twice. Wednesday night three hundred and twenty-five bales left after they stopped taking away; I counted 321, and six were carried away.

The whole cargo consisted of 998 bales; can't say how many got out by Wednesday; all that were out, except what had been taken away, were on the wharf. All the rest, not out, and stowed previously, was before one o'clock on Thursday. There is usage in regard to which consignee directs the wharf; the largest consignee is the one who sends me; no consignee ever complained of the wharf, or that we had not given full notice.

Cross-examination.

No notice to Aiken that the bark has been hauled from Battery wharf; the only notice I gave Aikin was through Washburn; I told Washburn that it was useless to go to Aikin & Eldridge, as they had taken most of theirs, and would undoubtedly take the rest away; my impression is Aikin did not say on Friday that he should hold the vessel liable; Mr. Aikin's account of our conversation is

as correct as I can give it; don't think he said anything about the course of business on fast day; don't think I saw Ladd, Aikin's teamster, on Monday; don't remember any conversation between Ladd and mate in regard to 15 bales, on Monday; some one came for Aikin's cotton Monday or Tuesday; I gave second notice to the others Tuesday, about knocking off; no doubt I knew how many Aikin had taken, my practice is to know; don't recollect that Ladd was there Wednesday; on Tuesday, at one o'clock, I did not take the stump to tell when the bark would resume, or that it would resume on Thursday at nine o'clock. I thought the cotton would all be out before that time; can't say how many bales belonging to Aikin were out on Monday; on Tuesday I think there must have been forty-five out from my memorandum, but don't know there was more than thirty-seven; the goods taken out on Monday and Tuesday were separated by their marks.

A part of the crew on Thursday morning went to work separating the cotton; they were occupied from fifteen minutes to half an hour; can't tell exactly when we began to put out on Monday; believe it was at three and an half o'clock, afternoon; ceased work on that day, I presume, at six o'clock; the stevedore did not work by the hour, but by the bale; the stevedore told his men to keep the marks separate; don't remember whether the mate talked to the stevedore; it was separated as well as it could be, on Monday and Tuesday; I presume I had general knowledge of fast day; we stopped work on Thursday just about knocking off time—just about one o'clock, p. m. The stevedore went off by one and an half o'clock, I should think; I did not request any one not belonging to the ship to look after the cotton after the stevedore left; when the fire broke out I was in the cabin on the deck; the weather was not cold; don't know whether the mate or myself first went on to the wharf after the fire; I heard a cry from the mate; he might have known it first; do not know whether stores on Lewis wharf were closed on that day. Have no memorandum of what was taken out of the vessel on the 10th, nor has any officer to my knowledge; a watchman was employed four nights, from Monday to Thursday, inclusive; there were men during the day going into the vault which was upon the wharf; it is common for them to go on to the wharf smoking pipes and cigars; no doubt there were persons smoking about there; I had a message from the stevedore, on Wednesday, about the dinner hour, that he should finish on Thursday. Don't know the messenger's name. The purport of the message was, that as there was not room to discharge that day, whether he should commence the next morning to put the whole out; I answered that there was no use to begin on that day, Wednesday, as he could not work more than an hour; I think the saw the stevedore, but am not sure; I was not aware that Goddard & Prichard intended to send some portion of their cotton to the depot; think I knew they were carrying off some cotton by trucks; don't remember marks;

think they gave receipts; have since given receipts for that taken; don't know how many men they had to work; don't know whether they knocked off entire on Wednesday earlier than usual. I saw some one weighing cotton on Wednesday; whether Goddard & Prichard's clerk can't say; don't think they weighed what was put into stores on Lewis wharf. On Monday, I saw a young man, a clerk at Goddard & Prichard's counting-room; think it was Brewer; don't know as I saw any one else; but before high water I saw Prichard there; I did not see Goddard then. There was bantering as to who should pay the cost of moving; Prichard agreed to pay. Don't think I went there on Tuesday; went on Wednesday about dinner hour, think before; think from eleven to twelve o'clock; think I did not go into more than one room; don't know how many were there. I then saw Mr. Goddard; think he stood where Mr. Prichard generally sat; did not discover that Goddard had any impediment in his speech; did not discover that Brewer had impediment until I saw him on the stand; don't think I was there again on Wednesday; no recollection of it now. I have no idea that I said to Goddard that we should resume on Thursday. I feel confident it was Goddard that I saw on Wednesday; don't remember but one conversation with Brewer; heard Andrew Solis say that he should be there on Thursday, and take away all his cotton; did not hear him say he should not be there; heard the reverse; did not hear him talk with the mate. He said nothing about Appleton store being open; nothing about his seeing the porter. Don't remember about his saying anything about keeping his marks separate, or about mending his cotton; don't think I went or sent to the schooner Nancy J. Brayton for Solis on Thursday; don't recollect mate's saying, on Thursday, that Solis would not be down; I believe that some of the Salmon Falls bales and some of Goddard and Prichard's were unladen on the 10th; don't think that I said, on Wednesday, that we should not resume on 10th; I told Pearson's truckman if they would take away their cotton as agreed we should get it all out before 10th; that was about all I said to him; I think I made some such remark to Solis, or some of Goddard & Prichard's men; don't know that I knew anything of Appleton's store until I came into court; presume I saw them putting cotton in there; can't recollect exact language of Solis when he said he would come and take his cotton on Thursday. When I returned from Mr. Goddard's counting-room, I saw Solis, and told him Goddard had referred me to his young man; Solis said they had stores enough then, and they would clear their cotton off that night; at a later hour, after the balance of the afternoon was spent, I had a conversation with Solis; the substance of it was that he would take it all away to-morrow; don't think the mate was present; there might have been several people round on the wharf, but I don't recollect; I presume I have known hundred of instances where discharge has gone on after a cessation, and after agents had called,

without a new notice. Did not know truckmen in Boston; don't work on fast day afternoon.

Direct, resumed.

Goddard on Wednesday, sent me to Solis to hurry him, instead of hurrying himself. He referred me to Solis as having charge of that department; I had seen the young man several times.

Solis seemed to have charge. I had no difficulty in finding him; it might have been an half hour after I saw Goddard before I saw Solis; the second conversation with Solis was late in the afternoon. He began to speak of freights, &c., and it went on to putting cotton away the next day. If the mate had said on Thursday that Solis was not coming down, I certainly should have noticed it, for I counted on his and Pearson's taking theirs away, for I did not believe that there was room unless theirs was removed. Until after the fire, I heard no objection from anybody to discharging on fast day; never knew consignees to take cotton from taffrail; some let it lie on wharf, and some take it away. Did not agree with the watchman before as to the number of nights he would be wanted; no one on Tuesday or Wednesday complained of cotton not being out. Mr. Amsden complained that some horses were in the way; told him if he would wait, we would help him.

Don't know as I ever delivered on board the vessel; always on the wharf; know of cases when after began discharging, consignee desired us to favor them. In one case they informed me if I put it out, I did it at my own risk. 325 bales were out upon the wharf Wednesday night; on Thursday morning I found the cotton scattered some, and put it back, and Pearson's I put outside, saying that he would soon come for it, and it would be handier there; nothing on Wednesday in the place or condition of cotton to prevent getting the cotton as conveniently as ordinary.

Benjamin P. Cheeney.

Am an express man; have been for fifteen years; in our business, which is connected with railroads, there are no holidays but Sunday. Our office is open on fast same as other days; we deliver and receive freight during several hours in the forenoon; office open all day, and we receive and deliver as long as the places of business are open; more or less receiving of freight all day. The distinction between fast and Sunday is marked; Sundays entirely closed. This is the custom among all express offices. We should consider ourselves culpable, if we did not make exertions to deliver on that day any valuable freight; churches very much lighter attendance on fast than on Sunday.

Cross-examination.

We transport by two routes, Boston and Lowell, and by the

Fitchburg. Both go to Canada; our messengers go by the passenger trains; we take freight of a large class; we transport large cases of dry goods, jewelry, and manufactured goods; don't carry cotton bales. We are limited in room, but we carry in the course of a day as many as ten cases; sometimes carry ten at once; we receive from various places business in town and from railroads; we use a good many one-horse wagons; we have nine in Boston. I have been on the railroads ever since they were opened. Freight depots are generally closed on fast day, but keep open a little while in the morning to deliver what is left over from the night before. There is this difference between fast and Sunday, in the afternoon they are alike, in the morning most places of business are open. Railroad passenger and freight trains run, and in the morning there is very little difference between fast days and other days; freight depots are open to receive and deliver perishable and such like freight in the morning, horses and such freight as is left over. The time of closing is varied; if considerable freight coming would keep open any time so long as convenience of business. The doors of the depot would ordinarily be closed early in the forenoon, but if a party should give notice that he should like to deliver, they would receive it. If no notice given, probably it would be shut; they would accommodate their customers. Fewer stores open on the wharves than other parts of the city. Very often send packages to stores closed on that day, and brought them back and delivered the next day.

Direct, resumed.

Long experience has taught us who are open to receive on fast day; all express offices are open fast day as other days. The Railroad Exchange open all day; the expresses to all parts of the Commonwealth are congregated there. Any quantity of small expresses running to different small towns; nearly one hundred of them. We carry and receive by our wagons; all are out on fast day. More riding and pleasure on that day than on any other day. I think afternoon is a mere holiday.

Cross-resumed.

More riding on fast day than on Sunday; never receive packages on Sunday.

John Grier.

I am a stevedore; have been 18 or 19 years; have done business on all the wharves for all merchants, in all occupations of trade—known the custom of discharge. If begun and day fair should keep on, and finish a job already begun—and that is the general custom

among stevedores. The captain gives notice, or some other party, as soon as vessel enters, that the vessel is in and going to discharge—that is all the notice that I know of. If choked, we begin again as soon as clear, without other notice.

Cross-examination.

I have worked one-half the fast days; work until we get it all out. Have had truckmen come and take goods away on several fast days. It is the general usage to come for them, when they have any to take away. Generally the shutters of the stores are closed, the doors open, and the clerks come and go. The custom-house, I believe, is closed. Have worked under custom-house officer on fast day, taking out foreign goods, on custom-house quays up to one o'clock, and stevedore could have gone on if he desired. Custom-house officer would then be overlooking us. Have not seen weighers and guagers open on that day. Port wardens open part of the time; closed part of the time. Seen it open until ten o'clock in one case.

Direct, resumed.

Have seen large stores upon the wharves, shutters closed and doors open. B. Bangs & Hemmenway—have seen clerks come and go when doors and shutters both closed—two or three cases.

Daniel E. Pratt.

Have been a stable-keeper 23 years; we consider Fast Day one of our best days; let more horses at higher prices, mostly for pleasure; business people ride on that day. We usually let more horses than on Sunday. Not much attendance on Fast Day at church; some trucking; express and job wagons usually plenty.

Cross-examination.

More than half of those who ride on that day are merchants' clerks; more in the afternoon than in the forenoon.

Lewis Jones.

Am sexton at St. Paul's church, and superintendent of the Music Hall. At our service on Fast day not over fifty persons present; from four to seven hundred usually on Sunday; other churches are about like ours.

Benjamin Brown.

Have been stevedore for twelve and an half years; know the custom of dischaging; I concur fully with the other stevedores.

I discharged the Tangier. We began on Monday, at 2½ or 3 o'clock p. m., and worked two hours; on Tuesday we worked until one

o'clock p. m.; left off then for want of room; a few bales were moved to go to a store.

I never placed a lot better; I placed it by its marks, except a few tumbled down, each mark by itself; all taken out on Tuesday were so placed. It was as well selected as any cargo I ever stored in Boston; I was there and looked to it, and had an extra man to see where it was put; I suppose we left off on Tuseday by one and an half o'clock; began on Thursday at seven; did not work on Wednesday because no room; on Wednesday I was on the wharf between twelve and one o'clock; saw no chance to do more that day; finished on Thursday five minutes after one o'clock; in the morning, all that was out in the morning was put the marks by themselves; that was done before we began. I saw it done, and found 20 bales knocked down; these were all we put on the wharf; I could not give a guess how many upon the wharf; much less than on Wednesday; the cotton taken out on Thursday was put up in good order; I never tried more to put a cargo in order; it was all separated by marks; the mate saw to the separating of the marks; he had the paper of marks; I saw Goddard's clerk on Monday; there is no custom to watch while discharging; two bales were taken on Thursday.

Goddard & Prichard's clerk said that they would take the cotton as fast as I would take it out.

Cross-examination.

On Sunday the vessel was at Battery wharf; had talk with Andrew at 8½ or 9 o'clock; Monday afternoon I was below and on the wharf; two-thirds of the time below; up and down often; began at 3½ o'clock; something was said about mixing cotton, and I got an extra man to separate; I had a talk with the captain on Wednesday about going on on Wednesday; I sent a man up to inquire; the captain sent back word that there was room enough to take out part, not all, and I had better come up; I was there in half an hour; I looked at noon, and said that there was not room for all, it would only be a bother to begin until I could move the whole. On Thursday at one o'clock it was all out, none misplaced. I paid men for mending bags. The second mate was round all the time. If the vessel had remained at Battery wharf, there would have been no Fast Day about it. It would have been all out before Fast. Andrew Solis told me, on Lewis wharf, that he would take his cotton as fast as it come out.

Direct, resumed.

Before we began on Monday, Andrew said if we would run it to the building, he would take it as fast as we could put it out.

We took more care than usual in putting the marks by themselves; Andrew Solis agreed to take it away as fast as it come out; we go on Fast Day the first part of the day—work, if at all, in the forenoon;

worked that same day half an hour in the afternoon; should not cover cotton; it is not hurt by rain. If goods are not liable to injury, go right along; we never send notice that we are going to work Fast day; give no new notice if interrupted; a Liverpool vessel was discharged last Fast Day.

Joshua Mahoney.

I assisted in discharging the Tangier. I saw the cotton from the ship's side on to the wharf. We worked the first day two hours and an half; on the second day until one o'clock. We placed it very regular. Brown kept a man to go with us with the marks on paper, and the mate was also with us. We placed it by its marks as well as we could possibly. Never saw a mate more attentive, nor more pains to take it right. Some of it was thrown down by teams, but those were all replaced on Thursday morning.

Ira Ely.

Was the mate of the Tangier. Goddard's clerk came to me at Battery wharf, on Monday, twice, and told me we had got to go Lewis wharf; said their stores were there, and they would take cotton off as fast as we could discharge; we commenced discharge on Monday and continued Tuesday forenoon. It was all separated. I saw to this when I had time; I had a paper of the marks; all marks were put together; the wharf was small and the teams knocked many bales down; I saw stevedore's men replacing them; we stopped on Tuesday because no room; a few more bales could have been put on by moving; cotton taken out on Thursday was placed by its marks; the stevedore worked an hour on Thursday morning putting those thrown down right; on Thursday at one o'clock, all out in perfect order; we had a watchman every night; I don't know about Monday night; the fire on Thursday was after dinner; I did not go to dinner on Thursday; I was not away from the wharf that day; Wednesday afternoon about one o'clock I saw Brown, the stevedore, and he said he should work on Thursday; I went to Solis and said, "Andrew, the stevedore is going to work to-morrow;" he said he did not want to; I said, no don't I; he said, if the stevedore works I shall, and get the cotton all in, and then you and I will go, get some wine, and have a good time; he never told me he should not work on Thursday; I never told anybody on Thursday morning that Solis wan't coming; never said any thing like this; did not tell Ladd, or any one, that we should not work; Brown told me he should work, and I told Solis; saw Solis pointing his men to bales on Thursday, which they then moved.

Cross-examination.

The import of Solis' talk was, that if the stevedore worked he should; no account that I know of which will show the number of

bales unladen each day; think some of Goddard & Prichard cotton unladen on fast day; can't say how much; the cotton was stowed in the vessel irregularly and comes out all huddled up; the fire commenced abreast of the bark's gangway, thirty feet from the vessel; before the fire I was talking with a junk buyer; Guild's teamster, I think, carted away some on Wednesday; conversation with Solis was within an hour after the stevedore told me; somewhere about two or three o'clock. On Monday he said he was going to put the cotton into the cellar; on Tuesday he said he wished Goddard would come back and show him where to put the cotton; said Prichard had not much to do with this.

EVIDENCE OF THE LIBELLANTS IN REPLY.

Daniel Mahoney.

I heard Mike McDonough ask the mate of the Tangier, on fast day morning, if Solis was coming, and the mate said no. He told him the evening previous he was not coming that day.

Cross-examination.

This was between seven and eight o'clock. We went down to put in other cotton. Andrew Solis asked us to do the day before. It was ten o'clock before I saw Andrew. We walked up and down the wharf until he came. He said nothing when he came, and nothing was said to him. Cannot tell how many there were of us. There was more than two; can't say ten.

J. D. Burtwell.

Was on Lewis wharf on Wednesday afternoon after Goddard & Prichard's cotton. Cannot state the hour. Andrew Solis said to the mate he should not be there the next day. Andrew said, "I shall not be here to-morrow to take the cotton." Mr. Clifford was there. That was all he said.

Cross-examination.

I was standing up by truck stand. I asked no question, and spoke to no one. Was a few steps from the mate—fifteen or twenty feet. Solis stood close by me. Can't tell why he should have said this. He, the mate, was taking an account of cotton. Did not hear the mate say a word. Andrew was within six feet of me. Clifford was near me. I was not there afterward. Andrew gave no reason for not being there. I first mentioned this when this hearing was formerly on. Andrew asked me if I remembered anything. I cannot tell another word.

Nathaniel Brewer, (recalled.)

I was here when Captain Sweetser testified. I first saw him on

Monday, 7th of April. Saw him next on Tuesday, at the counting-room. I was the only person in the large counting-room when he came in. He said there was considerable cotton on the wharf, and would like to have us take charge of it. I referred him to a clerk on the wharf. This was Tuesday forenoon, from ten and an half to eleven o'clock. I wore whiskers then; do not now. No circumstances to enable me to say which day it was. Am certain it was Tuesday. If not certain of it should not swear so. I think Mr. Goddard was in the small counting-room. Mr. Prichard was standing in the door between the counting-rooms, with his back towards us.

Cross-examination.

I do not resemble Prichard at all. Goddard was in the small counting-room; the captain was about as far from Prichard as from me. I am in the counting-room the greater part of the time. Have been with Goddard & Prichard four years.

Ammi C. Lombard.

I have been a merchant in Boston since 1825. For the last ten years out of commercial business; for the last five years, I have been for two years at Lewis' wharf, and three at East Boston. During my business years I received goods by southern packets; no usage of consignees to receive and carry away their goods on fast day. The stores are generally closed. For the last ten years I have usually been out of the city on fast day. It is usually regarded as a day in which little work was done, unless what was pressing.

Cross-examination.

I always had more or less vessels partially discharged prior to fast day. In case of partial discharge and hurry, I should have proceeded on fast day.

Edwin C. Bailey.

I am the postmaater of the city of Boston; have been for three years. The post office is open on fast day: in winter from eight to ten o'clock a. m.; in summer from seven to ten; on Sundays from nine to ten.

Cross-examination.

I am generally at the office fast day.

Charles H. Parker.

Am a member of the firm of A. & A. Lawrence, for twenty-five years. First seventeen years was accustomed to receive goods at Boston from other ports; have sent goods. We own ships; never received or sent goods on fast day. Our place of business not

open on that day. Have had ships prior to eighteen hundred and forty-eight partly unladen on the day before fast, go over fast day; there is no custom to receive goods on fast day, but the contrary. Consignees do not receive goods. In nine hundred and ninety-nine out of one thousand cases they do not.

Cross-examination.

Never on wharf on fast day morning. Can't tell whether vessels which have begun to unlade before fast continue on that day. Had no vessel in that state for last seven years. Presume had before. Only case I ever had there was no reason for hurry.

Nathaniel Brewer.

I am a weigher and guager in the city of Boston; go to my office in the morning on fast day, up to eleven or twelve o'clock, a. m., write; do not work weighing, as on other days; there is very little done on that day; one-third of the stores are closed. Rest open just as on other days till 11 or 12 o'clock.

Cross-examination.

Thought last fast was to be more generally observed than before. Always work on that day when I have anything to do.

Francis Fisher.

Merchant, on Central wharf, Boston; am an owner of ships, and a commission merchant; have received goods from other ports, and have delivered them never on fast day; there is no custom to receive on that day.

Cross-examination.

Never go to store on fast day. Cannot say that I ever had a vessel at wharf partially discharged on fast day; never had case where there was any cause for hurry.

Joel Richards.

I am a merchant, doing business on Long wharf, Boston; importer of East and West India goods; never receive on fast day; our store is closed; am not engaged in coastwise trade, but know of no usage for such goods to be delivered on fast day.

Cross-examination.

Don't intend to give court evidence in regard to coastwise vessels; not much on wharf on fast.

Adams Bailey.

I am deputy collector of the port of Boston; have been for

twenty-five years, with an exception during the time of one or two years; the custom house is never open on fast day. Have cleared some coastwise vessels on that day.

Cross-examination.

Cotton vessels have nothing to do with custom house. The inspector gives permit to discharge and has nothing more to do.

Benjamin Howard.

I am a merchant on Central wharf; have been a merchant for thirty years; have been an owner of ships; have received goods from other ports; have sent goods abroad, but never received or sent them on fast day; can't tell about others.

Cross-examination.

Don't go on the wharf fast day; no knowledge of case of partial discharge and hurry.

William I. Merriam.

I was formerly employed by the Old Colony and Fall River Railroad; I am now agent at the freight depot of the Boston and Maine Railroad. The freight depot of the Old Colony and Fall River road, and also that of the Boston and Maine, are always closed on fast day; no goods are received to be sent out or delivered; there are no freight trains out or in on that day. I have been at the Boston and Maine depot for one year; for ten years prior to that, was at the Old Colony.

G. S. Fogg.

Have been at the freight depot of the Lowell road for nineteen years; not open for the reception or delivery of goods on fast days. We receive only for factories.

Cross-examination.

Do not know how it is in case of a general depot.

Edmund F. Cutter.

I am a merchant; member of the firm of Skinner & Company; we receive from fifteen hundred to three thousand bales or more of cotton per year; do not receive on fast day; there is no usage known to me for consignees to receive goods on that day; the stores are not open; our stand for truckmen is closed.

Cross-examination.

Can't say if ever had vessel partially discharged on fast day.

We never see the cotton, and I shouldn't have known what our teamster did; don't know what their custom is. Partners sometimes meet at our store on fast.

H. G. R. Calef.

I have been accustomed to receive goods from the southern ports of the United States; no usage to receive goods on fast day; generally the stores are closed; I have had charge of making delivery of goods from vessels.

Cross-examination.

Stevedores unload under the captain; don't go on wharves fast day; have no knowledge of vessels partially discharged before fast, and hurry.

Peter Dunbar.

I have been a truckman in Boston for the last fourteen years; I have in my employment fourteen men, and from twenty to twenty-five horses. My teams are never out on fast day; I have worked for Mr. Hall, Ropes, the Tremont, the Lawrence, and the Suffolk Companies; no instance except one, in which I have worked on fast day; that was many years since, in the case of a high tide; the universal usage is not to work.

Cross-examination.

There are eighteen hundred licensed teams in the city of Boston, one-third of which are trucks.

William Ropes.

I have been a merchant in Boston for forty years, except an absence of some twelve years; there is no usage to open stores on fast day; no usage to receive or discharge goods on that day; I have received goods from foreign ports, and from the southern ports of the United States: have received cotton. I own and have owned vessels.

Cross-examination.

Have never been on wharf on fast day; don't recollect an instance of a vessel partially discharged on day before fast, or of a case involving hurry or convenience; have told my stevedores not to work on fast day.

Henry Hall.

I am treasurer of several manufacturing corporations, have been for many years, fifteen; and have received from twenty to twenty-

five thousand bales of cotton per year; never received any on fast day; know of no usage to receive, or take delivery on that day.

Cross-examination.

I don't speak of custom. Don't know it. Don't recollect case of partial discharge before fast.

James M. Beebe.

I am a merchant in Boston, have transacted a large business; the store of the firm to which I belong is closed on fast day. I have not received or made delivery of goods on fast day. Have received goods from the southern ports of the United States, and from foreign ports.

Cross-examination.

Don't go on wharf on fast day; we receive no raw cotton; no knowledge of case of partial discharge before fast day.

James Read.

I am a merchant in Boston. I am the agent or treasurer of eight companies. I receive from six to ten thousand bales of cotton yearly. Never knew an instance in which cotton has been received on fast day; the stores always closed. Truckmen have a stand in front of my store; they are never there on fast day.

Cross-examination.

The truckmen have charge of taking from the vessel, cotton consigned to me, but I inquire of them daily, as to their progress. Do not remember an instance of receiving goods on fast day. The attendance at church on fast day is about one-fourth of the number who attend on Sunday. Truckmen do all in getting cotton from wharf. Never on wharf on fast day; never had case of partial discharge on day before fast. Majority do not observe day as religious day.

J. B. Turner.

I am a cotton merchant, have been engaged in the business eleven years as clerk and partner, for myself five years; have received from five to ten thousand bales a year; have received a large quantity for others; we store cotton. I never received any on fast day—the stores are closed; I know of no usage to receive on that day. I attend myself to the reception of cotton. I have but one notice when vessel remains at same wharf, and I make it a rule under that notice to attend and take the goods as fast as they are discharged.

Never on wharf fast day. Never had vessel half unladen on fast day.

William H Boynton.

I am a partner of J. B. Turner, the last witness. I agree to the correctness of his statement.

Thomas Bancroft.

I am a truckman, doing business in Boston, have been for many years. It is not usual to work on fast day.

Cross-examination.

Have seen truckmen out on fast day—every fast day. Should not hesitate to finish a job on that day. Shouldn't hesitate to take ont teams on that day to free a crowded wharf, to enable captain to finish unlading. If special reasons existed, shouldn't hesitate to work on that day.

This cause came on to be heard upon the facts proved, and evidence reported to this court, and was argued by counsel: and after mature deliberation and full consideration thereof, it is now here ordered and adjudged that the decree of the district court be reversed; and the court, proceeding to pass the decree which the district court ought to have made in the said cause, doth declare and adjudge, that the said barque Tangier, its master and owners, have not made delivery of all and singular the merchandise in the said several bills of lading specified, and by the said bills of lading obliged to be delivered; and that the said libellants are justly entitled to recover and to charge upon the said barque and its proceeds in this action, the value of so much of the said merchandise in the said bills of lading mentioned as was not actually delivered unto the said libellants, together with the lawful interest upon the value thereof, from the time of the filing of the said libel in the district court.

And it is further ordered that it be referred unto Edward G. Loring, esquire, one of the commissioners of this court, to assess and compute the amount due to the libellants pursuant to this decree, and to report thereon with all convenient speed. And all further directions are reserved until the coming in of such report.

This cause having been sent to the assessor named in the foregoing order, for the purpose specified therein, and said Loring having heard the parties, by their counsel and witnesses, touching the same, he afterwards, to wit, on the fifteenth day of September, A. D., 1857, filed in the clerk's office his report: "that the amount due to the said libellants in said suit, pursuant to the aforesaid decree of this court, was in all the sum of nine thousand four hundred and thirty-six dollars and eighteen cents." And on the twenty-sixth day of said month of September, this cause came on to be further heard upon the coming in of the assessor's report, and thereupon, and upon consideration thereof, no exceptions having been taken, it is ordered,